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**CONCILIATION
AND ARBITRATION
IN
INDUSTRIAL DISPUTES**

GENEVA

1933

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IMPRIMERIES RÉUNIES S.A., LAUSANNE

PREFACE

Neither the Preamble to Part XIII of the Treaty of Versailles, on which the International Labour Organisation is based, nor the general principles contained in Article 427 of the Treaty specifically mention conciliation and arbitration as a field of study proper to the Organisation. Nevertheless, no doubts have ever existed as to its competence to deal with this subject, and it is but right that this should be the case, because such competence logically falls within the wider field defined in the second principle of Article 427 concerning the right of association for all lawful purposes of the employed and the employers. Not the least important purpose of such association is to enable working conditions to be determined by negotiation between parties meeting on a footing of equality. This means that the problems of the conciliation and arbitration system, which is intended, either by voluntary agreement or by compulsion, to bring these negotiations to a satisfactory conclusion, come within the scope of the Organisation. Moreover, the general purpose prescribed for it by the Preamble to Part XIII and by the principles of Article 427, which may be briefly described as the improvement of the economic and social position of the workers and the removal of the existing antagonism between employers and workers by peaceful means, clearly implies that any procedure which is designed chiefly to secure this latter aim must be of vital interest to the International Labour Organisation.

It is, therefore, not surprising that the International Labour Conference, as early as the 1924 Session, adopted a resolution submitted by Mr. Mannio, Finnish Government delegate, instructing the International Labour Office, in the course of its investigations, to devote attention to the question of the settlement of industrial disputes and the steps taken in different countries to create a conciliation and arbitration system ¹.

Even before this resolution was adopted, the International Labour Office felt it necessary to study the progress made with

¹ INTERNATIONAL LABOUR OFFICE : *International Labour Conference, 1924*, Vol. I, p. 485, and Vol. II, pp. 538 and 641.

regard to arbitration and conciliation and particularly the development of legislation ; and it published matter bearing on the question in *Industrial and Labour Information* and occasional articles in the *International Labour Review*. The effect of the resolution was that the whole question was more systematically studied, on the basis of a plan approved by the Governing Body at its Session in October 1924. This plan provided for the preparation of monographs on the regulations in fifteen different countries and for the drawing up of minor reports on the situation in a number of other countries. The primary purpose was to compile a general study of the subject from the international standpoint. This plan has been followed, although it has been considerably delayed by more urgent tasks. The present international study is a comprehensive summary of the results of these various enquiries.

Until such time as this volume was ready, important developments in this sphere were reported in *Industrial and Labour Information* and in the *International Labour Review* more regularly than formerly, so as to keep readers abreast of the trend of developments. The same provisional purpose was served by the tentative analysis and international survey of the problems of conciliation and arbitration in the *International Labour Review*¹, and the summary of the most important events of each year given in the *Report of the Director* presented yearly to the Conference since 1924.

While this preliminary work was going on, the International Labour Conference adopted at its 1927 Session the following resolution submitted by Mr. de Michelis, Italian Government Delegate :

The International Labour Conference requests the Governing Body to consider the possibility of placing the question of the solution of collective labour disputes on the Agenda of an early Session of the Conference².

The adoption of this resolution, the purpose of which was reiterated by a similar resolution submitted by the Indian workers' delegate, Mr. Chaman Lall, at the 1928 Session, increases the importance of the Office's work in this field, since it will serve as a basis for the decision of the Governing Body on the question

¹ *International Labour Review*, Vol. V, Nos. 1-3. A list of other publications of the International Labour Office on this subject will be found in the bibliography at the end of this volume.

² *International Labour Conference, 1927*, Vol. I, p. 680.

and possibly also for subsequent discussion at the International Labour Conference.

The present volume is a comparative analysis of the legislation of various countries on the conciliation and arbitration procedure adopted for the prevention and settlement of trade disputes concerning the fixing of working conditions.

It is scarcely necessary to point out that in addition to conciliation and arbitration procedure, there are other social institutions which may have an indirect effect in preventing trade disputes : in particular works councils, profit-sharing and co-partnership, welfare work and other steps taken to improve what have been described in English-speaking countries as " industrial relations ".

None of these measures or systems is considered in this study. Their nature is so different from that of conciliation and arbitration that they must be dealt with in a special enquiry. Even the legislation on the minimum wage, which has many points of similarity with the conciliation and arbitration system, is only mentioned occasionally when necessary for the sake of clarity. The subject has already been dealt with in a separate publication of the International Labour Office to which the reader may be referred for fuller particulars¹.

The study now published is divided into two parts. The first, entitled " General Problems of Conciliation and Arbitration ", consists of a systematic international survey of conciliation and arbitration in the settlement of collective disputes. It aims at showing, by the method of comparative law, the variations in the regulations of the different countries, which range from simple conciliation and investigation to compulsory arbitration and the compulsory enforcement of arbitration awards.

The second part, entitled " Conciliation and Arbitration in the Different Countries ", describes in the form of monographs the law in force on the subject of conciliation and arbitration in fifty States. While the first part thus gives a general idea of the regulations in individual States and aims at an orderly arrangement of the problems involved, the second part contains the material on which the general survey is based.

The various monographs have been prepared on as uniform a

¹ INTERNATIONAL LABOUR OFFICE : *Minimum Wage-Fixing Machinery*. Studies and Reports, Series D. (Wages and Hours of Work), No. 17. Geneva, 1927.

plan as was possible in view of the special nature of the laws and regulations analysed for each country. The first section of each monograph discusses the economic background and the history of legislation on conciliation and arbitration. The second deals with the regulations in force, and the third describes the opinions of those concerned and gives statistics of labour disputes and their settlement. The more important monographs conclude with a fourth section briefly summarising the main features of the study.

It has been thought expedient to group the monographs on geographical lines similar to those used for the series of studies on freedom of association¹. The fact is that between the subject of these studies and that of the present report there are many points of contact, as will appear moreover from the frequent references made in the course of this work to the studies on freedom of association. The order adopted here has a further advantage over the alphabetical order in that it groups the countries more or less according to the similarity of their systems of regulation and thus conduces to a more methodical arrangement of the volume.

It is inevitable that in works of this kind, covering a very large number of countries, a considerable interval of time may separate the completion of some of the studies. In order to prevent repeated revision of those completed earlier, events subsequent to their completion have been summarised in appendices following each study.

¹ INTERNATIONAL LABOUR OFFICE : *Freedom of Association*. 5 volumes. Studies and Reports, Series A, Nos. 28-32.

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GENERAL PROBLEMS
OF
CONCILIATION AND ARBITRATION

CHAPTER 1

INTRODUCTION

THE NATURE AND PURPOSE OF CONCILIATION AND ARBITRATION

Conciliation and arbitration, like all other phenomena in the economic and legal spheres, have their historical antecedents. This is, however, no place to consider the historical aspect of the question, which is dealt with in the monographs on the various countries in so far as is necessary for an understanding of the situation. A few brief introductory remarks on the principles of the matter must suffice.

Differences of opinion between employers and workers with regard to wages and other labour conditions have in the nature of things existed ever since the distinction arose between the capital-holding employer and the wage learner who is more or less dependent on capital. The community and the State, however, did not feel called upon to intervene in the settlement of these differences until they ceased to be confined to individual employers and workers and developed into struggles between organised groups.

There is no need to examine the warrant for assuming that labour disputes of this type existed in the latter days of the Roman Empire. It is certain, at least, that when the guilds were gradually losing their power in the Middle Ages, such disputes occurred between associations of masters and associations of journeymen. Even at that early date notable efforts were made towards establishing systems of conciliation as soon as the harmful effects of these disputes on the trade itself and on the community had been realised. But it was only in the early nineteenth century, when technical progress led to large-scale production in England, that a working class capable of combining came into existence. At a later date, the employers organised to meet the workers' unions. Modern trade disputes, which are the expression of the struggle between capital and labour for the distribution of the product of industry, generally take the form of conflicts between such trade organisations.

It is necessary first of all to distinguish the types of disputes which are dealt with by conciliation and arbitration and which are therefore considered in the present enquiry. In order to do so, it will be advisable, for the sake of clarity, to make a few general remarks on the position of conciliation and arbitration within the framework of labour law and social policy. Every system of law is in a state of constant flux so that it may be applied to varying conditions of life and society. This is very clearly seen in the case of labour law, many essential parts of which appear at present, like international law, to be developing rapidly. It is, indeed, only gradually that the special nature of labour law is being generally recognised. The civil law of most of the important States of the world, often framed entirely for the individual and his needs and thus strongly influenced by Roman law, is not capable of dealing with new legal problems arising out of the change in the conditions in important industrial countries with their huge masses of workers.

Now that the *laissez-faire* attitude to economic and political problems has been abandoned, there are no difficulties of principle in the way of State legislation in the field of labour protection in the strict sense (regulation of hours of work, the Sunday rest, shop closing, accident prevention) and in the field of social insurance. There are, however, at present grave difficulties in the adoption of new legal forms when the State finds it necessary to introduce regulations or rules of procedure which encroach upon the domain of existing civil or private law. This occurs particularly in the case of labour law, in the narrower sense of the term, the more so since it has not yet been universally recognised as a separate branch of law. The recognition of the peculiar legal nature of individual and collective labour agreements, labour jurisdiction and conciliation and arbitration procedure are cases in point. Whereas the special law on the individual contract of service and its counterpart in the sphere of procedure — labour jurisdiction — can still to a great extent be connected up with civil law and the corresponding law of procedure and can therefore find some support in existing regulations, there are much greater difficulties with regard to collective labour agreements and conciliation and arbitration. In this case, the collective nature of the new type of labour law is particularly clear, and as a result the older forms and systems of law prove inadequate. While the legal system gives the individuals concerned and their associations the means, in the form of collective agreements, of regulating their legal

relationships, to a great extent independently, the task of the conciliation and arbitration system, in cases where the parties for some reason are unable to regulate matters on their own account, is, typically, to assist them by measures which may be taken by the parties themselves or by the authorities. In the effort to achieve such ordered relationships, generally by the conclusion of collective agreements, either by common consent or with the help of external institutions, we see in a nutshell the origin and development of labour law. The function of conciliation and arbitration can, therefore, be compared in some sort to the functions of the Roman praetor, who created law by his edicts. This position of the conciliation and arbitration system in the wider field of labour law at once shows the difficulties and the importance of its task. Rightly understood, it should be the means of helping those concerned to arrive at some legal method for regulating their economic and social life whenever difficulties occur which prevent them from succeeding without external assistance. The appropriate settlement of working conditions, which constitute the main subject to be regulated, is a very important factor for the employer in the success of his undertaking, but for the worker it means the very basis of his existence. One would, therefore, expect that it would be the obvious desire of both parties to regulate these conditions by peaceful means and to avoid open conflict, the outcome of which must be uncertain and the losses often extensive. In many countries where collective labour law has not yet taken concrete legislative form, this function of the conciliation and arbitration system in the maintenance of industrial peace is specially emphasised ¹.

From what has been said, the general nature of the trade disputes which are dealt with by conciliation and arbitration should be clear. The scope of the present work cannot be adequately defined without some further explanation of the nature of these disputes.

The term "trade disputes" includes several different concepts which must be clearly distinguished from each other. It includes first of all disputes between employers and workers arising out of the individual contract of employment. These are generally dealt with by the normal procedure laid down in the existing legal system. In many cases a special form of procedure, in the shape of labour courts, has been instituted to deal with disputes

¹ Cf. below, especially pp. 77 et seq..

of this type. This group will, in principle, be ignored in the present enquiry, which is concerned solely with so-called collective disputes, that is to say, disputes between groups of persons, generally employers and workers' organisations, which are not conflicts concerning legal rights like the individual disputes but rather trials of strength (for the adjustment of conflicting interests) arising out of the settlement of working conditions (hours, wages, etc.). For the settlement of collective disputes of this kind it is not a question of applying and interpreting existing law, but rather of finding first of all the equitable basis according to which these disputes should be regulated. The aim of each party is to make the standard as favourable for itself as possible, as for instance when a workers' organisation endeavours to obtain the highest possible level of wages. In essence, this is the same distinction as is made in international law between legal disputes on the one hand and political disputes or struggles for power on the other.

Any procedure for the prevention or settlement of such collective disputes must therefore endeavour to arrive at a compromise between the reasonable claims of each party and thus lead both parties to a voluntary agreement for the regulation of working conditions, generally in the form of a collective agreement. This may be done by making a formal proposal to the parties for an agreement or by the issue of an award which it may or may not be compulsory for the parties to accept. The German Conciliation Order expressly refers to this as the purpose of conciliation when it says :

Conciliation committees and conciliators shall assist in the conclusion of collective agreements (collective contracts and works agreements) ¹.

It is true that collective disputes may also be "disputes on rights", and such disputes tend to play a more and more important part in modern labour law. These will include first of all legal disputes arising out of the collective agreement between the parties with regard to the interpretation or the existence of such an agreement. In Sweden, for example, a special Act of 22 June 1928 ² instituted a procedure for dealing with such disputes, and in Germany these collective disputes on rights are dealt with by

¹ Section 3 of the Conciliation Order of 30 October 1923 (*Legislative Series*, 1923, Ger. 6). Whether it is desirable to restrict the task of conciliation to this one point is a question which is still being widely discussed in Germany.

² *Legislative Series*, 1928, Swe. 3.

the same labour tribunals which are competent to deal with individual disputes.

The above distinction between individual and collective disputes on rights on the one hand and disputes on collective interests (for adjusting the balance of power between the parties) on the other hand is by no means recognised or expressed in the legislation concerning such disputes in every country. In many cases the same procedure is adopted for settling both types. It will therefore be necessary in the course of this investigation to refer occasionally to disputes on rights between individuals or groups as well as to disputes on collective interests, which are considered as being trade disputes in the narrower sense of the term. It must however be emphasised that in principle this study deals solely with the settlement of industrial disputes between conflicting interests. It is only in the case of such disputes that the conciliation and arbitration system shows its peculiar characteristics, and it is just in these cases, where the battle is fought out with extraordinary tenacity and bitterness because the vital interests of powerful groups in the community are at stake, that the necessity for conciliation machinery makes itself urgently felt. The initiative in creating such machinery may be taken by the parties themselves or by the State, which intervenes in order to protect itself, its economic system and its citizens from the dangers involved in such disputes. In view of the close economic connection between States in the modern world, these collective disputes and the open conflict which follows if conciliation fails, constitute a problem of international importance. Any disturbance in the normal production of commodities and the consequent shortage, as well as the loss of purchasing power of the individuals concerned, must inevitably affect not only the national economic system of the State involved but to a greater or less extent also the world market and all countries connected with it. That shows the international character of the problem and makes it clear that the prevention and settlement of trade disputes, which are nothing more or less than a form of economic warfare between two of the parties concerned in production, constitutes a problem which it may not prove possible to solve by the adoption of uniform international procedure, but which humanity must, for the sake of international economic progress and the welfare of the workers which is dependent on such progress, earnestly strive to solve in the national sphere.

The purpose of conciliation and arbitration, therefore, is to unite the conflicting social groups of employers and wage earners to

a unity of effort. This is generally attempted not through individuals but through the groups as represented in their industrial associations.

This task combines economic policy and social policy, because the settlement of working conditions has a double aspect. It may be studied from the point of view of the worker who is concerned about his social position, or from the point of view of the economic system as a factor affecting economic conditions. Conciliation and arbitration procedure has been described as a kind of "flying ambulance squad" which appears wherever a collision occurs between the interests of workers and employers which threatens to disturb their harmonious productive activity¹. In doing so it covers each danger-spot where a clash of interests might occur with a network of legal regulations and thus helps towards a peaceful settlement. The conciliation and arbitration system, however regulated, and its ultimate aim — the collective agreement — therefore stand side by side at the very centre of the new creative efforts in the field of labour law. This fact in itself is sufficient to show the difficulty inherent in this mechanism and at the same time its very great value.

THE MAIN DIFFERENCES BETWEEN IMPORTANT SYSTEMS : THE METHODS OF CONCILIATION AND ARBITRATION

A great variety of methods has been adopted in different countries for the prevention and settlement of collective disputes by means of conciliation and arbitration. This diversity is indeed confusing, and at first sight it would appear impossible to attempt any classification. At the same time the systems — in so far as systems can be said to exist — must be to a certain extent arranged and classified if we are to make an international comparison between them. Such a classification, the details of which will be explained later, is all the more necessary because the variety in the systems is by no means the result of chance, but has its deeper roots in political and legal conditions and in the social psychology of each nation.

¹ WEDDIGEN : "Angewandte Theorie der Schlichtung", in *Jahrbuch für Nationalökonomie und Statistik*, March 1929. A summary of various opinions as to the nature and purpose of arbitration and conciliation, along with the authors' own opinions, will be found in FREYTAG : *Die sozialpolitische Schlichtung, Versuch einer systematischen Erfassung des Schlichtungsgedankens*, pp. 29 et seq. (Leipzig, 1930). The same volume also contains information concerning the bibliography of the subject. A further discussion of the principle will be found in the concluding chapter of this study.

In all highly industrialised States the problem of the central purpose of conciliation and arbitration is bound to arise in some form or other in connection with the settlement of collective disputes. The procedure may be used merely to give the parties unbiased assistance in regulating their relationships and concluding collective agreements. It may, on the other hand, be employed as a form of governmental — that is, political — influence in a definite direction (e.g. to raise wages or restrict hours of work) on the regulation of working conditions and the contents of collective agreements.

A general survey of the regulations in different countries will show that there is a difference of principle between two groups. On the one hand, we find systems which are intended merely to strengthen the desire for an understanding between the parties and help them to an agreement, either with or without State aid. This may be called voluntary conciliation. On the other hand, there are systems which under certain conditions, generally after voluntary conciliation has failed, provide for compulsory State intervention in fixing working conditions and supervising the maintenance of industrial peace. These may be called compulsory arbitration systems. It will be seen later that each type exists in many varieties with a number of intermediate forms.

In most States, when efforts were first made to prevent and settle trade disputes, the initial step was based on the principle of conciliation, and there was no talk of compulsory State intervention except in so far as such intervention was already possible in connection with the restriction of the right of combination. Great Britain was the first country in which conciliation on a voluntary basis was extensively developed, being supplemented and encouraged in many directions, although not entirely systematised, by certain State institutions. It is probably due to the traditional distrust which the English-speaking nations have shown for State intervention in legal and economic questions that other important English-speaking countries, such as the United States of America and Canada (although with certain reservations in this latter case), have adhered strictly to the principle of conciliation. The legislation in the Union of South Africa, although obviously modelled on the Canadian system, departs from this principle in several essential points, while in Australia and New Zealand the emphasis has throughout been laid on compulsory arbitration. Among the other countries which have maintained the principle of conciliation mention may

be made of Austria, Belgium (with a reservation to be referred to later), Czechoslovakia, Denmark, France, Japan, the Netherlands, Poland, Sweden (special regulations for collective disputes on rights) and Switzerland.

The other countries which have regulated their conciliation and arbitration systems have to a greater or less extent applied the system of State intervention, either as an exceptional measure (e.g. only in public utility undertakings, or for disputes affecting the community as a whole) or as a general rule. The chief of these countries are Australia, with most of its separate States, Germany, Italy, New Zealand, Rumania and Russia.

In spite of the differences between the systems, which can only be briefly referred to here, there are certain similar stages in the procedure in every country which arise out of the nature of the question. As a rule two main stages can be distinguished in the procedure. The dispute reaches the first stage of the procedure when it has so developed that certain special bodies, set up to undertake conciliation negotiations, begin to deal with it. At this stage there is as a rule no open conflict (strike or lock-out). In countries which have conciliation and arbitration boards created by agreement in particular industries and also State institutions for dealing with labour disputes, conciliation proceedings which prove unsuccessful before the private boards may be continued by the official boards. This stage, in which the procedure is generally carried out without any compulsion and by informal negotiation, sometimes by an impartial chairman of the board, may be described as the conciliation stage. If no success is achieved, there is generally, but not always, another possibility of bringing the parties to an agreement. One or more referees, either without or with the duly prescribed collaboration of representatives or agents of the parties or persons specially competent in the questions involved (*ex officio* in the case of official procedure), propose to the parties a formula on the basis of which it is hoped they may be able to agree. It is sometimes decided in advance that the parties will accept this proposal, which is generally referred to as an award. This section of the procedure may be called the arbitration stage. What distinguishes it from the conciliation stage is the fact that there is a definitely expressed formula or award which has a certain affinity to a legal judgment. It will be seen later that systems which provide for the compulsory enforcement of the decisions of conciliation or arbitration boards naturally employ this form of award. There is no need to emphasise the fact that the distinction between the two stages of the procedure

— conciliation on the one hand and arbitration on the other — is intended merely as a theoretical guiding line. In practice the procedure often moves from one stage to another without any visible interruption, and the same bodies may be responsible in both cases, although there is a material difference between their two functions. It should be noted that the countries which do not make the enforcement of conciliation proposals or arbitration awards compulsory feel and make a clear distinction between these two stages.

It will at once be obvious that at both stages, and particularly for arbitration purposes, a clear recognition of the facts, and particularly of the economic situation and the respective strength of the parties to the dispute, must be of great importance. In the English-speaking countries particularly it has been realised that in complicated cases it is difficult to obtain such a knowledge of the facts in the course of the conciliation or arbitration procedure, and consequently, if a thorough enquiry appears necessary, a special procedure is applied by which the actual situation can be clearly brought to light by unbiased observers. This enquiry procedure may be instituted when conciliation proves fruitless. It is also possible, however, even after arbitration has failed and the parties refuse to accept the award. The purpose of this procedure is usually to make the facts of the case known to public opinion, which can then decide for itself. This means that a certain pressure is brought to bear on the parties which may lead them to an agreement or which may pave the way for fresh attempts at conciliation or arbitration. Such further attempts will be based on the objective facts revealed by the enquiry; the atmosphere will be calmer and there will be greater chances of success.

This procedure, therefore, does not really differ in essentials from conciliation and arbitration; it is merely that one important question, which has always to be settled during difficult cases, is dealt with separately so as to ensure adequate treatment. This view is not altered by the fact that, when objective facts are revealed by such a procedure of enquiry, conciliation or arbitration often becomes unnecessary because the parties may come to an agreement on the basis of the revealed facts. Nevertheless in the following pages it will be wiser to consider the system of enquiry as a separate stage or type of procedure along with conciliation and arbitration, since it has an importance all its own in many countries.¹

The difference between the concepts conciliation, arbitration and enquiry must be thoroughly appreciated in order to follow the argument of the ensuing pages.

The methods adopted in conciliation and arbitration systems in order to achieve their purpose can best be studied not by a direct comparison of all the various systems but by tracing the development of the procedure from the institution of the conciliation and arbitration boards until its conclusion and the application of any decisions which may have been arrived at. At the same time a comparison will be made between the methods adopted in dealing with the various problems arising at different stages of the procedure in various countries. In this way, the numerous differences between the systems will be most clearly recognised. It will be found, as was already mentioned, that there are many intermediate stages, differing very slightly from each other, between the pure conciliation method and the compulsory arbitration system (e.g. Great Britain on the one hand and Australia on the other). It might be said that every intermediate type can be found, from the principle of the open market to the wage board system. In reality, therefore, the difference between the various types is not fundamental, although at the same time there are these wide extremes¹.

The comparative analysis which begins in the following chapter will therefore be appropriately subdivided as far as may be found necessary.

In the section dealing with the organs of conciliation and arbitration a comparative survey will be given of the different types of official boards and boards set up by the parties concerned, their organisation and composition and their territorial and material competence. Even at this stage an interesting progression may be observed from the mere permission granted by the State to the parties concerned to institute conciliation boards, through the stage of official support, to that of State initiative in setting up and regulating in detail permanent governmental or other authorities for the purpose. An important point in this connection is the way in which the relationships between official and voluntary conciliation and arbitration boards are regulated.

The next part of the study will deal with the position of the parties with regard to the institution of proceedings and such questions as the right to be a party to conciliation and arbitration proceedings, the right to be heard before conciliation or arbitration boards, the persons entitled to apply for such proceedings in any particular case and the right of representation of the parties. It is clear that the first of these points, namely, the right to make

¹ On this point the reader is referred to Chapter VII, particularly pp. 130 et seq.

use of conciliation and arbitration machinery or to be subject to the application of such machinery, is extremely important. The finding of a satisfactory solution and the form of this solution are bound to have an influence on the nature and success of the whole procedure. There must obviously be a great difference in the results according to whether the persons who may make use of the machinery are individuals, or temporary *ad hoc* associations of persons without responsibility, or well-disciplined industrial associations, or again only such associations as fulfil certain conditions, or perhaps even only monopoly associations (as in Italy). Compared with this point the other three are relatively unimportant and are mentioned here merely for the sake of completeness.

This comparative survey of the machinery and the parties will be followed by a discussion of the way in which proceedings are instituted. This includes questions such as the method of applying to a conciliation or arbitration board, the formalities to be complied with, the possibility of compulsory reference and various other conditions affecting the activity of the conciliation or arbitration bodies, such as the possibility of steps being taken *ex officio* even contrary to the wishes of the parties concerned. It will be seen that even at this stage in the procedure, when the parties are entirely free to make use of the conciliation and arbitration machinery, there is, nevertheless, a certain compulsion on the dissatisfied party to attempt negotiations before proceeding to open conflict. In this connection reference will be made to the important question of the obligation not to stop work prior to or pending reference to a board, for which provision is made in many countries, sometimes under penal guarantees (e.g. Belgium ¹, Canada ², Norway ³). Other questions concerning the legal regulations to be observed when a dispute before a conciliation or arbitration board is pending will also be discussed.

The description of the various stages of the proceedings and the principles on which they are based will bring out more clearly the diversity of the means employed and the degree to which they are applied in different cases. A number of questions call for discussion at this point. The examination of certain problems with regard to the limitation of the field of activity of conciliation and arbitration, to which brief reference was already made ⁴, and

¹ Order of 5 May 1926, sections 15 et seq. (*Legislative Series*, 1926, Bel. 5).

² Act of 12 June 1925, sections 56 et seq. (*ibid.*, 1925, Can. 1).

³ Act of 5 May 1927, section 6 (3), (*ibid.*, 1927, Nor. 1).

⁴ Cf. pp. 5 et seq.

in particular the limitation of their activity to the encouragement of collective agreements, will be followed by a comparative analysis of the formalities required, the necessity of taking notice of and the obligation to appear before the board, to supply information, to negotiate and to give evidence, as they are dealt with in the legislation of different countries. A description will then be given of the way in which and the extent to which certain basic principles have been applied in different countries so as to further conciliation and the issue of arbitration awards. Among those it will suffice to refer to the following recognised principles of civil or penal procedure : informality or formality ; proceedings conducted *ex officio* or by the parties ; enquiry or negotiation ; the existence or otherwise of rules of evidence ; whether the proceedings before the board should be public, oral, direct or the contrary ; finally, the question of costs.

The last point to be considered is that of the conclusion of the proceedings and the application of any decision which may be arrived at by the conciliation or arbitration board. Here the differences (in the choice of method) between conciliation and arbitration in various countries will be clearly apparent. The description of the method by which the conciliation proposal or the arbitration award is arrived at, its form, content and legal character, will be followed by a discussion of the complex of problems connected with the enforcement of the award or other decision ; these have already been briefly touched upon in the section of the introduction dealing with the contrast between conciliation systems and compulsory arbitration systems. Furthermore, special attention must be paid to the acceptance or rejection of the award, the power to declare it binding on the parties in advance or subsequently, the civil or penal guarantees for its observance, other forms of pressure or compulsion and the right of appeal where such exists.

The following chapters will be devoted to a more detailed study of the various methods of conciliation and arbitration along the lines of the plan briefly sketched above. After a short discussion of the principles which have led the State, employers and workers to favour conciliation or arbitration, as the case may be, the volume will close with certain conclusions which may be drawn from the comparison of the various national systems of legislation.

CHAPTER II

THE SETTLEMENT OF LABOUR DISPUTES: INDEPENDENT AND OFFICIAL CONCILIATION AND ARBITRATION MACHINERY — INSTITUTIONS FOR THE SETTLEMENT OF DISPUTES

A. — Independent and Official Conciliation and Arbitration Machinery

Undoubtedly the best basis for a smoothly working conciliation and arbitration system is provided by well-organised and responsible trade organisations which have mastered their duties. It is therefore natural that in the oldest industrial State of the modern type, England, many and varied arrangements for conciliation and arbitration should have been created by the parties concerned, in close connection with the development of a system of collective agreements. The toleration and tacit recognition of the trade organisations, even though due at first perhaps to indifference, was necessary in order that such machinery could be created and permitted to function. For the independent regulation of conditions of employment by negotiations between the associations of the occupational groups concerned and the creation of machinery for the settlement of labour disputes definitely transcend private interests, and are in fact a form of political activity which was originally by no means universally permitted. The stage of tacit toleration of activities of this sort and — as far as our subject is concerned — the stage in which the State simply permitted the interested parties to create machinery for the avoidance and settlement of disputes have now been passed in almost every country in which questions of conciliation and arbitration are of any practical importance. It is true that there may be echoes of the past in the legislation of some countries, for instance, section 2 of the Belgian Order of 5 May 1926 on arbitration and conciliation committees¹ which permits the establishment of such machinery by the parties concerned and yet prescribes that the voluntary committees must be approved by the competent Minister

¹ *Legislative Series*, 1926, Bel. 5.

in order to be allowed to exercise certain functions. The Order justifies itself however, by giving the machinery a quasi-official position which will be described later and by providing that the State shall bear the administrative costs (section 18, subsection 2). The same is true of the independent machinery (industrial councils) of the South African Conciliation Act of 26 March 1924¹ (see section 2). There is no need to go into further detail on this subject, since even the English-speaking countries, whose inhabitants as a rule much prefer private initiative to State intervention, have almost entirely adopted the system of putting official machinery at the disposal of the parties concerned in the dispute, at their own request, if the efforts of the parties themselves are unsuccessful; and therefore it is no longer a question of mere toleration of independent machinery. On the contrary, there is everywhere an increasing tendency to promote the official settlement of disputes, and to deal with them by official machinery specially framed for the purpose. It is impossible to say in general to what extent this is a step forward; the question must be decided according to the prevailing conditions in each country. A carefully constructed official conciliation and arbitration system is, for instance, necessary in a country where the parties are so inadequately organised that collective regulation of labour conditions would otherwise be impossible. Under such circumstances, the official institution can also educate the population to form trade organisations and train these to prevent and settle collective disputes. In any case, however, it may be assumed that carefully constructed and well-applied machinery for the independent action of the parties concerned is particularly suitable for the purpose of arriving at decisions by conciliation or arbitration and of settling labour differences before they have become actual disputes or open conflicts. It is also probably the best preliminary to an efficient official conciliation and arbitration system, since as far as possible it weeds out all disputes for which official intervention is not needed and may perhaps be less suitable, being more difficult to adapt to the particular needs of each individual industry. Conciliation and arbitration machinery independently established by the parties concerned does in fact continue to play an important part despite the above-mentioned tendency towards the expansion of the corresponding official institutions, though this importance varies in different countries. It is easy to distinguish between

¹ *Ibid.*, 1924, S.A. 1.

countries in which the weight of responsibility for the avoidance and settlement of labour disputes lies on the independent machinery of the parties concerned, and those in which official institutions are the more important. Great Britain, the United States, Canada and perhaps South Africa are the principal countries which belong to the former group, though in the last-named this machinery is already taking on quasi-official features. In these countries the working of independent conciliation and arbitration machinery takes precedence of that of the State as a matter of course — a fact which is explicitly mentioned in section 2, subsection 4, of the British Industrial Courts Act ¹.

The second group comprises the countries in which, though most cases are dealt with by the official institutions, independent machinery exists side by side with it, settles a proportion of the differences, and is officially encouraged and supported. This encouragement can go to the length of giving the independent machinery certain privileges which raise it to a quasi-official status, so that it then takes the place of official institutions. This is true, for instance, of the approved conciliation and arbitration committees in Belgium (*comités libres de conciliation et d'arbitrage agréés par le Ministre de l'industrie*). Countries such as Austria, Denmark, Finland, Germany, the Netherlands, Sweden and Switzerland also belong to this group. Official bodies have to remain inactive in all cases where independent machinery exists and the possibilities of conciliation or arbitration through it are not yet exhausted. This is the case in Germany, where, according to the second Order for the Administration of the Conciliation Order of 30 October 1923 (see section 9), "the action of independent conciliation and arbitration bodies have precedence of conciliation committees ² and of conciliators ³. If, despite the competence of an independent body, a conciliation committee or a conciliator is called in, the latter must refer the dispute to the competent body and inform the parties of such action." A similar procedure is provided for according to section 7 of the above-mentioned Belgian Order, the Netherlands Act on labour disputes of 4 May 1923 ⁴, and the Danish Act of 21 December 1921 as amended on 25 February 1927 ⁵. In the corresponding Acts in

¹ *Legislative Series*, 1920, G.B. 1.

² I.e. the official conciliation institutions.

³ I.e. the official conciliators.

⁴ *Legislative Series*, 1923, Neth. 1, section 7.

⁵ *Ibid.*, 1927, Den. 1, section 4.

Finland of 21 March 1925¹, Sweden of 28 May 1920², and Switzerland³, provisions of this nature are also to be found.

Finally, a third group of States has no independent conciliation and arbitration system whatever, or only to a minor degree. The Australian States, Italy, New Zealand, Spain and the U.S.S.R. belong to this group. In Italy the recognised trade associations have become, as is well known, public bodies with a legal status largely equivalent to that of official institutions. According to the Act of 3 April 1926⁴ on the legal regulation of collective labour conditions, proceedings may not be instituted before the labour tribunal unless it is established that the federation to which the interested parties belong or the central co-ordinating body has attempted to secure an amicable settlement of the dispute and that this attempt has failed. This has, however, not yet led to the creation of permanent conciliation machinery to give effect to this provision, and in view of the legal status of the trade associations, it would be more official than independent in character.

Besides the countries mentioned, all others in which industry is developed even to a small extent have passed legislation on conciliation and arbitration and created official institutions for the necessary procedure. Neither the names of these countries nor their legislation need be enumerated here. Their most interesting characteristics will be duly noted in the following comparative review⁵.

B. — Conciliation and Arbitration Machinery

GENERAL OBSERVATIONS

A comparative review of the conciliation and arbitration machinery in the different countries may be limited in most cases to official or quasi-official bodies, for in these all the noteworthy characteristics of independent machinery are to be found. When it is advisable the latter will also be discussed.

A few general ideas which arise concerning the formation and constitution of such machinery must first be dealt with. It need hardly be said that there is very great variety in this respect,

¹ *Ibid.*, 1925, Fin. 1, section 4, para. 3.

² *Ibid.*, 1920, Swe. 6-8, section 9.

³ Section 33 of the Federal Act of 18 June 1914, respecting work in factories (*Basle Bulletin*, Vol. IX, p. 269).

⁴ *Legislative Series*, 1926, It. 2, section 17, para. 2.

⁵ See also list of Acts in the Appendix at the end of this volume.

as will be sufficiently clear in the subsequent consideration of individual cases. It is, however, possible to discover certain representative features, and these may be remarked upon, though an exhaustive description is neither possible nor desirable.

The first point is the separation of the body or bodies charged with conciliation and arbitration from the ordinary judicial authorities. Although the above-mentioned distinction between the ideas of conciliation and arbitration on the one hand and of the administration of justice on the other is not everywhere realised, most States have nevertheless for subjective and practical reasons dealt with the two subjects on different lines and have therefore usually entrusted them to different authorities. Evolution has, however, been necessary here, and is not yet everywhere complete. The special courts set up in a large number of countries, on which employers and workers were represented and which gave decisions on individual trade disputes, originally undertook also the prevention and settlement of collective disputes — as, for instance, the former industrial and commercial courts in Germany (Acts of 22 July 1890, 30 June 1901 and 6 July 1904). The German guilds, guild courts and seamen's boards based on the Seamen's Order also functioned in this way. The same is true of the former conditions in Italy, where, according to the Act of 15 June 1893, conciliation boards were attached to the industrial courts. On the other hand, it sometimes occurs that the conciliation and arbitration institutions not only settle collective disputes but also work for friendly conciliation in individual differences — as, for instance, under the Austrian Act of 18 December 1919¹ on the establishment of conciliation boards and on collective agreements, and in Great Britain and clearly also in other English-speaking countries, so far as an individual difference can lead to a strike or lock-out.

On the whole, however, the basic policy of separate treatment of the administration of justice (application of law) on the one hand and the settlement of disputes (creation of law) on the other is almost everywhere either explicitly or implicitly recognised². Despite the fact that the conciliation and arbitration institutions are often actually described as courts — as in Great Britain (industrial court) and Australia (arbitration court) — they are sharply

¹ *Legislative Series*, 1920, Aus. 1922.

² It must be remembered in this connection that the application and the creation of law are not essentially distinct. In Anglo-Saxon law in particular, a judicial interpretation is at the same time often an addition to case law. But this question cannot be considered further here.

distinguished from the ordinary courts of law. In Italy the *magistratura del lavoro*, which is the court of final appeal in matters of conciliation and arbitration, is part of the ordinary legal appeal machinery, but here too the separate nature of the dispute is explicitly recognised in the Act of 3 April 1926 ¹, which runs as follows :

The court of appeal, acting as a tribunal in labour matters, shall issue decisions in conformity with the laws respecting the interpretation and carrying out of contracts, and in conformity with the principles of equity in the case of the fixing of new conditions of employment...

Another important question may be briefly referred to here, namely, whether the conciliation and arbitration institutions are to be independent of the administrative (political) authorities, as in the case of the judiciary, etc., or, and to what extent, they have to take their directions from such authorities. This question will be referred to later on during the discussion of the choice of chairman and members of boards and their position, and its essential importance for conciliation and arbitration will be made clear, during the enquiry into the place of compulsion in the procedure ².

The principle of the separation of the settlement of disputes from legal procedure and the appointment of different authorities for each of the two functions is connected with that requiring the co-operation of the parties concerned, in many cases at every stage of the procedure. This is in itself no innovation as compared, for instance, with industrial courts (*conseils de prud'hommes*). The lay members of the board, if they may be so described in such matters, have not only to assist the jurist chairman in explaining and appraising the facts, but even more, with their knowledge of the strength of each party and their expert estimates of the social and industrial results of a settlement, they have to help him to discover a satisfactory compromise and persuade the parties concerned to accept it. They have often also to assist in the drafting of the proposal for conciliation, which, according to the legislation of some countries, is at the same time an arbitration award or judgment (Australia, Italy) or can be made one. In other words, the parties concerned are not, as in an individual dispute, simply the object of a legal decision, but in some form or other themselves take part in the creation of law.

¹ *Legislative Series*, 1926, It. 2, section 16.

² Cf. Chapter VII.

This co-operation of the parties concerned varies in the different countries. Also, in the successive stages of the procedure which have been differentiated above — preliminary negotiations, conciliation, arbitration, and at times (in Germany) the declaration that the award is binding — this co-operation takes different forms.

It is possible to distinguish two types of co-operation of the parties concerned. They can act as parties, but at the same time as experts, who give the conciliation and arbitration body the necessary information concerning the facts, and who work together with it to discover a satisfactory solution ; the court or board in question then makes its conciliation proposal, its arbitration or other award alone, as is mostly the case in the Scandinavian countries. On the other hand, the co-operation of the parties can, and usually does, go so far that their participation is in some way provided for in the composition of the conciliation or arbitration body. In this case it is not usually the persons actually concerned in the dispute who are called upon to co-operate, but certain persons in some way closely connected with the industry in which the dispute is taking place, or otherwise experienced in industrial questions, but who may be expected to have a certain degree of impartiality in their judgment of the case in hand. There are two methods open. Such persons may either assist the conciliation and arbitration institution as expert advisers without the right to vote, or be full members of the board or court with the right to vote on the conciliation proposal or the award. In the latter case their rights and duties may take on a semi-official nature, and even approach those of a judge or of the chairman of a conciliation or arbitration institution. Under both systems the trade organisations are often called upon to co-operate in some form or other, and seem in fact to be very well suited to this purpose. The co-operation of interested persons as members of the conciliation or arbitration institution itself will naturally be most frequent in practice at the actual arbitration stage when, after negotiations or conciliation have been unsuccessful, it is necessary to issue a public proposal for conciliation or an award. At such a stage it is all the more important to ensure that the members of the institution who are drawn from the same circles as the parties are free from connection with or dependence upon such parties ¹.

A further noteworthy measure which may be remarked in the conciliation and arbitration systems in many countries, parti-

¹ Cf., as to position of assessors, pp. 36 et seq.

cularly the United States and Great Britain (the Railways Act of 19 August 1921 ¹) is the participation of representatives of the public, particularly of consumers, but also of public interests and the State in the shape of the co-operation of the Public Prosecutor or some similar official, as in the Italian *magistratura del lavoro*, for instance. Arrangements of this kind spring from the idea that the public has the right to make its views heard and to exercise an influence in the prevention and settlement of labour disputes. It is perhaps not by chance that such procedure is principally to be found in countries which in general deprecate the exercise by the public authorities of a decisive influence in collective disputes between employers and workers. On the other hand, countries in which the authoritative intervention of the State is in some form or other permitted are more able to dispense with the special representation of consumers or the co-operation of the representative of the general interests; in such countries the official conciliation or arbitration body may be expected to bear the interests of the public and of the State in mind. This idea is, for instance, plainly to be noticed in the section of the German Conciliation Order defining the conditions under which an arbitration award is declared binding. It says ² :

If the award is not accepted by both parties, it may be declared binding if the settlement contained therein appears just and reasonable, with due consideration for the interests of both parties, and if its application is desirable for economic and social reasons.

The practical result of this clause has been that the award is declared binding chiefly when the settlement it achieves seems to be in the general interests of the economic system or of the public. In Italy, where the influence of the State on the regulation of labour conditions is already so far-reaching, the law further provides that a State representative, the Public Prosecutor, shall take part in the proceedings, which may be explained by the whole tendency of Fascism to emphasise the idea of the State as the most important factor in life. It is difficult to decide to what extent the efforts to ensure the co-operation of the community as a whole by means of the representation of consumers or of the general public are successful. The fact that such methods are so far not extensively used, and that discussions of the development of conciliation and

¹ *Legislative Series*, 1921, G.B. 5.

² Part I, section 6.

arbitration procedure in different countries have practically ceased to mention them, seems to justify the assumption that their importance and efficiency are not very highly valued.

SPECIAL FEATURES

In the foregoing a distinction is made between various stages in the procedure: conciliation, arbitration, and in some cases an additional stage, investigation or enquiry. A comparison of the formation and constitution of conciliation and arbitration boards or courts is made difficult by the fact that in many countries the same bodies function with unchanged membership for several or all of the stages, while in others different bodies deal with the different stages. In general, it may perhaps be assumed that enquiry is carried out by a special body in view of its special character. Its purpose is a thorough elucidation of the facts of the case; it often requires considerable time and is therefore separated from the ordinary procedure, which is meant to yield speedy results. But arbitration is in many cases carried out by a different body from that which undertakes the conciliation. The latter is, as a rule, carried out by the same body that deals with the preliminary proceedings.

Conciliation is certainly the type of procedure which is most common, because, wherever machinery for the friendly settlement of collective disputes exists, attempts are made to arrive at a decision by means of it before other methods are used. In many countries also, if conciliation fails, the means of achieving a settlement are exhausted.

Permanence of the Machinery and its Competence

Almost everywhere where conciliation and arbitration are regulated by law, permanent machinery has been set up, although the composition of the various bodies is certainly often left open, in particular in respect of the choice of persons according to the requirements of each particular case. In many countries, too, the legislative provisions merely lay down general principles for the composition, duties and powers of the board or court while their actual formation does not take place until a case arises, and sometimes only on special application to the competent authority, as in Canada for the establishment of boards of conciliation and investigation under the Industrial Disputes Investigation Act of 1907. Even in such cases, however, the procedure to be followed

is laid down in detail. Often the chairman is permanent, while the other members are temporary, but here too the machinery as such may be regarded as permanent.

In a general comparison of the law affecting these bodies, the purely practical question whether their competence is defined according to locality or to economic considerations (by industry, for instance) can be of little importance. There is much diversity in this respect. Private conciliation bodies are naturally connected as a rule with a certain industry, while permanent official bodies are usually organised on a geographical basis. The structure of the system of collective agreements in a country is also likely to have some influence ; where, as in Germany, the system is centralised, that is to say, the scope of the agreements extends to a large number of undertakings, often not only in one but in several allied industries, the tendency will be for the conciliation machinery to have competence over a wider area for a specified group of industries or branches of industry classed together for the purpose of collective agreements. This obviously happens when the conciliation body is set up by the agreement. A significant example is that of the agreements so common in many countries which have achieved national uniformity for a certain industry, and then created conciliation machinery with a correspondingly wide competence (cf. the federal collective agreement for the German chemical industry with its conciliation machinery). It need hardly be pointed out that each method of defining competence may have its own advantages — the economic, in that it facilitates adaptation to the particular needs of the industry in question, the local, in that it facilitates a bird's-eye view of the labour conditions of all industries in a certain district, which must itself be suitably defined. It must also be noted that the two methods may be combined and used to supplement one another. A local definition of competence will for instance make due allowance for economic considerations, and vice-versa.

The Formation and Composition of Conciliation and Arbitration Bodies

The formation and composition of conciliation and arbitration bodies is, on the other hand, a matter of great basic importance both for the further development of the procedure, the direction of which is in a certain degree dependent upon it, and naturally also for the success of the system. The mode of formation and composition of the court or board is often evidence of the attitude

of the country concerned to the whole question of conciliation and arbitration — that is, it shows the comparative strength of the ideas of State intervention in the relations between the parties on the one hand, and of the conception of free play for the activities and decisions of the parties on the other. If there are exact regulations in respect of the choice or the appointment of conciliators or any other members of the bodies, and of the qualities required of them, this denotes a tendency towards the first of these types of organisation ; but the fewer and less decisive such regulations are, the more certainly can a tendency towards the second type be assumed. It is also clear that the more the State intervenes in the regulation of disputes on collective interests, from the simple obligation to have recourse to the competent authority and to appear before it, up to the enforcement of its award on pain of a penalty under criminal or civil law, the more necessary is a careful, well-defined and detailed regulation of the procedure, including that of the selection and appointment of members of the institution.

(a) *Personal Requirements : Age, Impartiality, Independence, Discretion, Obligation to Serve*

As regards the composition and formation of conciliation and arbitration institutions, there are first of all a number of countries which in principle prefer the single conciliator to the board or committee. Among these are the Northern countries — Denmark, Finland, Norway and Sweden. The legislation of these States, however, permits the formation of a body of conciliators in particularly difficult cases or when the parties explicitly require it ; this is achieved by the collaboration of several permanent conciliators in a committee or by the formation of a conciliation board to which specially chosen and suitable persons are appointed *ad hoc*¹.

In other respects the same problems concerning selection, appointment, duties and powers arise in the case of a single conciliator as in that of the chairman of a body, except that the qualifications of a single conciliator, particularly with regard to independence of judgment, personality, sense of responsibility, expert knowledge and power of inspiring confidence in the hearts of the interested parties should perhaps be even greater than

¹ Sections 1 and 5 of the Danish Act, 1 and 3 of the Finnish Act, 27 and 31, para. 3, of the Norwegian Act, and 1 and 12 of the Swedish Act.

those required of the chairman of a body composed of a number of persons.

The qualifications required of a conciliator by the legislation of the various countries may be divided into those of a general and those of a particular character. Civic integrity (possession of the full rights of a citizen), attainment of a certain age and nationality of the country in question are the principal requirements in the former group, while in the latter possession of special experience in economic and social matters, training in the State service, judicial qualifications, and in general an official status may be mentioned.

Finally, the steps to be taken to ensure the independence and impartiality of the conciliator are of importance.

In all these respects, too, there, is very great diversity in the various countries. There may be a certain uniformity in the general qualifications required of the conciliator or the chairman of an institution; for it is natural that everywhere only those persons are considered qualified whose reputation as citizens is blameless, whether this is expressly stipulated by law (cf. Norway ¹) or not. It is natural, too, that a certain minimum age is required (in Norway 30 years, in France 25, in Colombia, however, only 21). The determination of the actual age limit is a matter of experience and judgment. The requirements in many countries, which are mentioned in more detail below, have the indirect result of excluding persons of too low an age. Conciliators must in many cases be citizens of the country in question (for instance, in Norway under the Act cited, in France under the new Bill, and in Colombia under the Act of 4 October 1920 on conciliation and arbitration ²). This, too, is a comprehensible regulation, particularly in countries like Norway, where conciliators or chairmen of conciliation institutions have extensive powers and duties, though it is hardly probable that even without such a regulation citizens of other States would be called to such posts in any considerable number ³.

The particular personal qualifications required of the conciliator are worthy of more detailed consideration.

It is first of all self-evident that the task of conciliation is very largely psychological and calls for the art of handling men.

¹ Sections 27, para. 1 and 10, para. 3 of the Labour Disputes Act of 5 May 1927.

² *Legislative Series*, 1920, Col. 1, section 6.

³ But cf. the corresponding Act of the Canton of Basle, which explicitly provides for the appointment of foreigners, though only under certain conditions (see monograph on Switzerland on p. 212 below).

A conciliator who lacks this quality will never be equal to his task. There are certainly persons in whom it is innate ; in others it may be latent and can be developed, though State examinations are certainly not sufficient to discover this. But even if the final test of capacity can be only in actual exercise of the duties, many regulations aim at excluding in advance persons who are unsuitable because they lack certain specific qualifications. In some countries it is considered a good guarantee not to appoint a conciliator until the trade organisations have been consulted or even have given their agreement. This usually leads to the exclusion of all persons who do not possess the confidence of the parties, which is essential to satisfactory fulfilment of their duties. There are regulations of this sort in Denmark ¹, where the Permanent Arbitration Court, which is composed jointly of employers and workers, makes the necessary proposals, and where it is also provided that at least one employers' and one workers' member of the Court must have agreed to the proposal. In Germany, "consideration is as far as possible given to the wishes of the industrial associations of employers and workers in the district when appointing the chairmen of conciliation committees" ². The same is true in Canada ³, under the Industrial Disputes Investigation Act, though here the provision refers only to appointments for individual cases. In practice, steps of this sort are often taken even in countries where there is no such legal provision.

Many Acts provide that a conciliator may at any time be relieved of his duties, even if he has a definite contract for a number of years. The object is to be able to replace without difficulty a person who has for any reason lost the confidence of the parties, possibly through no fault of his own. The Austrian ⁴, German ⁵ and Swedish ⁶ provisions may be given as examples.

Besides satisfying these requirements of law or custom as to his personal character, the conciliator must offer more material qualifications, that is to say, knowledge and experience of economic,

¹ Act of 21 December 1921, as amended on 25 February 1927, section 1 (*Legislative Series*, 1927, Don. 1).

² Section 2 of the second Order for the Administration of the Conciliation Order of 29 December 1923.

³ *Legislative Series*, 1925, Can. 1, section 7.

⁴ Section 4 of the Act of 18 December 1919 respecting conciliation boards and collective agreements (*Legislative Series*, 1920, Aus. 22).

⁵ Sections 2 and 6 of the second Order for the Administration of the Conciliation Order.

⁶ Section 1 of the Royal Notification of 31 December 1920 issued in pursuance of the Act of 28 May 1920 respecting conciliation in trade disputes (*Legislative Series*, 1920, Swe. 6-8).

social and legal matters. The conciliation and arbitration laws of a number of countries contain special provisions on this point. Where such provisions exist, they are as a rule to be found in administrative regulations and the like, which are not always available to outsiders.

The fact that according to many regulations conciliators are appointed by public authorities who have expert knowledge of the matters in hand, and are therefore in a position to judge the suitability of a person for the work of conciliator, also tends towards a satisfactory selection. For instance, the appointment of presidents of conciliation boards in Austria is in the hands of the Secretary of State for Justice, in consultation with the Secretary of State for Social Affairs ; in Germany the appointment of conciliators, who sometimes act also as arbitrators, is in the hands of the Federal Minister of Labour ; in Denmark, in those of the Permanent Arbitration Court, which is competent to deal with individual and collective labour disputes on rights and therefore possesses the necessary experience ; in other legislation (Finnish, Norwegian and Swedish, for instance), the King, Government, etc., nominally appoints the conciliators, but in practice the competent department for social affairs, *i.e.* the Ministry of Labour, etc., undoubtedly co-operates to a decisive degree, so that there is a similar guarantee of satisfactory selection. In many cases it is also provided that conciliators are under the supervision of the Ministry of Social Affairs or some other competent authority, from which it follows, if this is not already explicitly stated, that they are bound, if required, to report to that authority¹. In so far as conciliators have an official or quasi-official position, as is the case in the Northern countries and Germany and Austria², the obligation to report and supervision are generally matters of course. Naturally, in countries where, as is usual for instance in Australia, conciliators and arbitrators have a definitely judicial position, such supervision and obligation to report often lapse. It must be noted, however, that in the countries where there is such supervision it must also tend to promote a satisfactory choice of conciliators.

In a number of countries it is provided that conciliators shall

¹ Examples are section 9 of the above-mentioned Royal Notification in Sweden, section 1 of the Finnish Act of 21 March 1925 respecting conciliation in collective labour disputes, section 2 of the Danish Act of 31 January 1927, and section 8 of the German Conciliation Order of 30 October 1923.

² Cf. below, p. 29.

have previous official training, and in particular have qualified for the bench or the bar ; such a condition is regarded as the best guarantee of a satisfactory selection. There are regulations of this sort, for instance, in Norway ¹ ; in Sweden so far as the appointment of special arbitrators under the Act of 28 May 1920 is concerned, but not of the conciliators themselves under the general Act of the same date ; and, above all, in Australia and New Zealand. Mention may also be made of the Australian Commonwealth Act on conciliation and arbitration of 22 June 1928 ², the Western Australian Act of 31 December 1925 ³, the New South Wales Act of 18 March 1926 ⁴ and the South Australian Act of 6 January 1926 ⁵. According to the New Zealand Act of 1 October 1925 ⁶, the regulation applies only to the Arbitration Court proper and not to the separately organised conciliation councils.

In Rumania ⁷ an official of the Ministry of Labour is in charge of conciliation. In practice it is, of course, very often the case, even when there is no legal provision to that effect, that specially suitable officials become conciliators. This practice is most common, as mentioned above, in countries in which the selection is in the hands of the higher labour or judicial authorities ; in Germany and Austria, for instance, there are, among the conciliators and chairmen of conciliation committees, many officials with administrative or judicial training. According to German law, conciliators, even when not officials, have the status of civil servants for the duration of their office, a fact which has the effect not only of introducing the obligation to make reports to superiors, but also — which is more important — of giving them a more independent and respected position in the eyes of the parties to the dispute ⁸.

The impartiality of the conciliator or chairman of the conciliation committee and his complete independence of the parties is a particularly important qualification, and is in most cases regarded as so essential that it is specifically laid down in the laws of many countries. As mentioned above, judicial competence is often required, and this is a provision which tends in the same direction. It will suffice to quote from the legislation of a few countries. The

¹ Section 27 (10) of the Act.

² *Legislative Series*, 1928, Austral. 2, section 12.

³ *Ibid.*, 1925, Austral. 12, section 43.

⁴ *Ibid.*, 1926, Austral. 7, section 13.

⁵ *Ibid.*, 1926, Austral. 1, sections 9-12.

⁶ *Ibid.*, 1925, N.Z. 1, section 64.

⁷ Section 12 of the Act of 4 September 1920 (*ibid.*, 1920, Rou. 4).

⁸ Sections 2 and 6 of the second Order for the Administration of the Conciliation Order.

British Industrial Courts Act ¹ of 20 November 1919 says : " The president of the court and the chairman of any division of the court shall be . . . one of the independent persons aforesaid. " The corresponding provision of the Norwegian Act prescribes that they " must not be members of the executive committee of a trade union or an employers' association, nor be permanent employees of such a union or association ". The Canadian Act of 28 March 1907 on the investigation of industrial disputes, as amended on 12 June 1925 ², in providing for *ad hoc* conciliation machinery lays down that " no person shall act as a member of a board who has any direct pecuniary interest in the issue of a dispute referred to such board ". The very useful provision, also found elsewhere, that the chairman of the board is to be chosen by the two other members, helps to ensure the greatest possible impartiality on his part ³. Furthermore, both the president and the other members must affirm on oath their readiness to act impartially ⁴.

The necessity of the impartiality of conciliators — that is to say, their freedom from connection with the parties to the dispute — is thus widely recognised, though there is not in every case a specific regulation to this effect ; but the position of conciliators or members of conciliation institutions in respect of independence of the State varies greatly in the different countries. This is the first point at which the contrast between voluntary conciliation and compulsory arbitration, already mentioned in passing ⁵, makes itself felt, a contrast that runs through the whole system of conciliation and arbitration. Should the State put at the disposal of parties to disputes machinery for the peaceful settlement of their differences but otherwise refrain from exerting any influence on the progress and decision of such disputes ? This is not the place to answer this fundamental question with the fullness it deserves. It may be dealt with more effectively later, as part of the discussion of the most efficient forms of compulsion, in particular the declaration that arbitration awards and similar decisions are binding and their compulsory enforcement ⁶. The question is mentioned here only in order to bring out the connection between the apparently unimportant matter of the independence of the conciliator

¹ Section 1, No. 4.

² *Legislative Series*, 1925, Can. 1.

³ Sections 7 and 8 of the Act.

⁴ Section 13 ; cf. also section 32 of the Norwegian Act.

⁵ Cf. p. 9.

⁶ Cf. p. 115 concerning the termination of the proceedings, and Chapter VII.

and the most disputed point in the whole system of conciliation and arbitration. It is in fact comprehensible that the degree of compulsion which, under the conciliation system, the State brings to bear on the progress and decision of disputes, should often have a certain effect on the position of the conciliator. The more detailed and exact the procedure and the greater the compulsion, ranging from the mere obligation to be a party to the proceedings and to appear, to the declaration that the awards are binding and their compulsory enforcement, the more probable it is that the State will control the conciliators by stricter regulation of procedure and exert an increased influence on them and on the bodies set up. It must be noted, on the other hand, that in the very countries where a particularly far-going criminal or civil sanction guarantees the execution of awards (the Australian States, New Zealand and Italy), it is often regarded as important to make the conciliation, or rather in this case arbitration, institutions, and in particular the chairman, independent of State influence, at least in cases of appeal ¹.

In this connection it must suffice to note that evidently when the conciliator is more dependent on State influence, there is a greater possibility of political influence on the progress and decision of the dispute. That this is so is often disputed or not recognised ; sometimes, indeed, this result, which may be the outcome of actual circumstances and legal conditions, is contrary to intention, and it is sought to avert it.

The question whether conciliators shall be independent of State authority or not is hardly ever put point-blank in practice, and there are very few clear regulations on the point. The German Conciliation Order of 30 October 1923 is an exception, for it says ² :

The Federal Minister of Labour may issue general guiding principles for the proceedings of conciliation committees and conciliators. Conciliation committees and conciliators shall decide individual cases independently, and shall not be bound by instructions.

Though these general principles, which may, for instance, relate to the method of regulating wages or the restriction of hours of work, are to be regarded from the legal standpoint only as non-binding recommendations from the competent authority to the conciliators ³, yet they are in fact respected by all conciliators

¹ Cf. remarks in Chapter VII, pp. 132-134.

² Section 7.

³ Cf. DERSCH: *Die neue Schlichtungsverordnung*, 1925, pp. 280 et seq.

who do not wish to run the risk of removal from their office. This undoubtedly implies a certain dependence on the Government department concerned, even though the conciliator's freedom of judgment in individual cases is explicitly reserved by law.

In countries where conciliators are under any sort of supervision of the Ministry for Social Affairs or some other body subject to political authority, or where they have a quasi-official position (as, for instance, in Austria, Denmark, Finland, Germany, Norway and Sweden)¹, this in itself makes it possible for the State to influence their general activity. It must nevertheless be noted that, as mentioned above, in several countries which have carried compulsion as far as it can go — that is to say, to the penal enforcement of awards — the members of the court or board, or at least the chairman, enjoys the independent position of a judge. This is true of the regulations in the Australian States, New Zealand and Italy, but even here the principle of independence is not applied on every occasion. Some of the Australian States have, beside their arbitration or industrial courts, special conciliation institutions, either official or set up with official assistance, before which disputes are generally brought (either compulsorily or voluntarily) in order that conciliation may be tried before the arbitration court decides on them, supposing the conciliation to have failed. In New Zealand² this system is regulated with special rigour; it is also to be found in Queensland³ and Western Australia⁴. The Australian Commonwealth Conciliation and Arbitration Act, too, as recently amended on 12 June 1928⁵, again lays more stress on conciliation. Although the parties to the dispute often have considerable influence on the composition of these institutions (conciliation committees or boards, conciliation officers), and in particular on the choice of the chairman, it may happen that they cannot agree on the chairman, and that the authorities have to appoint him or are in any case empowered to do so by law. In such cases, it is conceivable that the Government may influence the proceedings, and in important disputes this almost certainly occurs sometimes. There can be no question of the full independence of the chairmen of arbitration courts, if, despite the fact

¹ Cf. above, p. 28.

² Sections 39 et seq. of the Act of 1 October 1925 (*Legislative Series*, 1925, N.Z. 1).

³ *Ibid.*, 1929, Austral. 6, sections 10 and 11.

⁴ Sections 118 et seq. of the Act of 31 December 1925 (*ibid.*, 1925, Austral. 12).

⁵ *Ibid.*, 1928, Austral. 2, sections 34 et seq. Cf. FOENANDER in *International Labour Review*, Vol. XIX, No. 2. Feb. 1929.

that they have the position of a judge, the court is bound to respect the basic wage fixed by another authority — for instance, in South Australia, the Board of Industry¹.

In Italy, finally, when a dispute arising out of collective relations cannot be peacefully settled by negotiation between the trade associations, federations, confederations, or central co-ordinating bodies², it is brought before the labour tribunal (*magistratura del lavoro*), which is the ordinary court of appeal, composed for this purpose of three ordinary judges with the addition of two experts. In order to ensure the authority of this body, particular importance was attached, as is shown by the memorandum to the Bill, to having disputes on collective interests, and not only on collective rights (such as those concerning interpretation of a collective agreement), settled by the judicial decision of an impartial court³. There is thus no doubt that the chairman and the two professional judges who are his colleagues are in principle independent. The State may influence the regulation of wages and other labour conditions at an earlier stage, before the dispute comes before the labour tribunal, acting ultimately through the Ministry of Corporations on the various federations and confederations which undertake the preliminary conciliation. Furthermore, the general interests of the State are represented at the proceedings by the Public Prosecutor, who may also make proposals according to his own judgment.

In Great Britain, the United States and Canada, countries in which in principle conciliation and arbitration are not compulsory, it may in general be assumed that the conciliation and similar bodies are independent of State influence; but in practice a political authority may often make itself felt. This may occur at an early stage if the parties cannot agree on a chairman or on the composition of the body, and the matter is decided by the authorities. It is noteworthy in this connection that the British Ministry of Labour has at its disposal in London and the great industrial cities a number of permanent conciliators who have full discretion to work for a friendly settlement of any disputes which may arise between employers and workers⁴.

¹ Section 264 of the Act of 6 January 1926 (*Legislative Series*, 1926, Austral. 1). Cf. also Chapter VII, p. 134, footnote 1.

² Section 17, para. 2, of the Act of 3 April 1926 (*ibid.*, 1926, It. 2).

³ Cf. extract from the Preamble given in *Freedom of Association*, Vol. IV, p. 70.

⁴ Cf. B. HAMBURGER: "Aus dem englischen Arbeitsrecht: Der ständige Schlichter", in *Soziale Praxis*, 1927, p. 1202.

Although there are no other regulations governing the work of these conciliators, they have to report regularly to the Minister of Labour on their observations and activities, and are convoked by him from time to time to general consultations, so that he is kept constantly informed and is in a position to decide whether he shall intervene in any particular case, especially in accordance with the Industrial Courts Act. It is only natural that in suitable cases the Minister should give the conciliators, if not instructions, then at least recommendations based on the bird's-eye view which he has obtained from the reports. In the nature of things, therefore, these permanent unofficial, and yet at the same time official, conciliators, though by no means dependent, are in practice liable to a certain extent to be influenced by the views of the competent political authority — the Minister of Labour — on more important general questions. The right of the Minister of Labour, under the Conciliation Act of 1896 and the Industrial Courts Act of 1919, to appoint conciliators or arbitrators under certain conditions either for individual cases or as permanent members of the Industrial Court, also gives him an opportunity to make his influence felt.

Nevertheless, all the above openings for State influence do not alter the basic fact that in countries where conciliation and arbitration are not compulsory, chairmen of conciliation institutions and arbitrators are in principle independent, and that a consistent political influence on decisions — for instance, on the regulation of wages or hours of work — is either completely impossible or practicable only to a minor degree. In the case of the British Industrial Court, this fact is emphasised by its former President. Sir William Mackenzie, in an article in the *International Labour Review*¹: "The Court is entirely an independent tribunal, and is not subject to any Government or departmental control or influence."²

In order to complete the picture of the position of conciliators and chairmen of conciliation and arbitration institutions, it is only necessary to mention two further obligations usually required of them, official discretion and fulfilment of functions.

Official discretion is obviously a necessary condition if the parties are to have that confidence which is essential to the success of the proceedings. It is not in every case specifically

¹ *International Labour Review*. Vol. III, Nos. 1-2, July/Aug. 1921: "The British Industrial Court."

² On the principle of political influence in conciliation and arbitration, see also Chapter VII, pp. 132-134.

called for in the laws and regulations governing conciliation and arbitration. Where the conciliators or chairmen of institutions have an official or quasi-official position, the condition is in practice satisfied¹ without the need of special regulation. Yet owing to the importance of the matter there are in fact many such regulations, for instance in the Netherlands² and Norwegian³ Acts. In other cases legislation on discretion and the means of ensuring its observance is necessary and is to be found in various forms in almost all systems. Punishment for failure to observe this obligation is not universally provided for (not, for instance, in Canada⁴ and Colombia⁵), but in most States it is the rule, the majority prescribing fines. This is the case in Norway, under the Act previously referred to, and in Australia (e.g. South Australia⁶ and New South Wales⁷, where the fine may be as much as £500). Immediate removal from office is also explicitly provided for, though this should be a matter of course. In the Netherlands, so much importance is attached to ensuring official discretion that persons infringing it are liable to three months' imprisonment as well as to a fine, though criminal proceedings are instituted only at the wish of the injured party⁸. To what extent there may also be civil liability for damages in some countries cannot be gathered from the terms of the conciliation and arbitration laws, and must be judged according to the civil law of each country. It may, however, be assumed that this liability exists in many countries. It need hardly be said that the subjects covered by the obligation to discretion are not uniform in all laws, and it seems from the text of relevant Acts that some States are particularly severe in this matter and others less so. Legal practice — as far as cases of infringement of the obligation come before the courts, which can hardly be often — is also certain to vary.

On the other hand, it is unusual to find special regulations imposing on conciliators or chairmen of conciliation institutions an obligation to fulfil their functions, that is to say, to serve once they have accepted office. If they are officials or at least occupy

¹ Cf. above, p. 28.

² Section 58 of the Act of 4 May 1923 (*Legislative Series*, 1923, Neth. 1).

³ Section 42 (35) of the Act of 5 May 1927 (*ibid.*, 1927, Nor. 1).

⁴ Section 13 of the Act of 12 June 1925 (1907) (*ibid.*, 1925, Can. 1).

⁵ Section 10 of the Act of 4 October 1920 (*ibid.*, 1920, Col. 1).

⁶ Section 178 (industrial board) of the Act of 6 January 1926 (*ibid.*, 1926, Austral. 1).

⁷ Section 19 of the Act of 18 March 1926 (*ibid.*, 1926, Austral. 7).

⁸ Cf. the provision cited above.

a quasi-official position, such regulations are unnecessary, for the obligation is inherent in their general obligation as officials¹. If they have no such official capacity, in all probability they took over the position of chairman or conciliator of their own free will at the request of the parties, and it is hardly likely that they will withdraw from the position once they have accepted it. Nevertheless there are occasionally provisions, for instance in the above-mentioned Acts of South Australia (section 179), New South Wales (section 18) and Western Australia², which specify that the chairman of an industrial board is obliged to exercise his functions and even prescribe fines for inexcused failure to attend meetings or refusal to vote; he may also be deprived of his office. The obligation to serve is not to be confused with the above-mentioned obligation to exercise the office truly and impartially³. The whole question of the obligation to serve has its principal practical application in the case of the other members (assessors) of boards and courts. The reader is therefore referred to the discussions of this point in the section on their position and obligations below.

(b) *The Position of the Assessors : Connection with the Parties, Impartiality, Independence, Discretion, Obligation to Serve*

Most of the points which have just⁴ been discussed in connection with the position of conciliators and chairmen of conciliation and arbitration bodies arise also, often in the same form, in respect of the other members. This is to be explained by the fact that the latter are to a great extent the conciliator's or chairman's assistants, who have to support him in his duties or even in part to function themselves. Nevertheless, their usual appellation, assessors, indicates that their position has peculiar characteristics, which have already⁵ been referred to in the remarks on the participation of the parties and deserve mention.

The rôle of the assessor seems never to have been clearly described and is perhaps not always fully realised. Practical necessity, which is the mother of invention, has defined it, and the forms vary with the needs of each country, and even within

¹ Cf., for instance, the second Order for the Administration of the German Conciliation Order of 29 December 1923, section 2, para. 3.

² Section 111 of the Act of 31 December 1925 (*Legislative Series*, 1925, Austral. 12).

³ Cf. p. 30.

⁴ Cf. pp. 25 et seq.

⁵ Cf. pp. 21 et seq.

a country with the characteristic features of different conciliation and arbitration institutions.

It may be assumed that the original machinery for conciliation and arbitration, created for the most part by the parties for each particular case, consisted simply in the use of a mediator. The latter had to act if and when the direct negotiations between the parties came to a standstill, and to attempt to bring the representatives appointed by the parties to an agreement. He acted single-handed and shouldered all responsibility. This is still in principle the system established by law in the Northern countries (Denmark, Finland, Norway and Sweden). If the functions of the mediator are limited to those of a simple go-between, as may be generally assumed in doubtful cases, especially under the regulations of the English-speaking countries, and if the points at issue are not complex and of wide import, the sole responsibility of the impartial mediator is a satisfactory arrangement. But as soon as his powers are extended, as soon as formal and public proposals for compromise and even judicial awards binding on the parties are demanded of him, and as soon as particularly difficult cases arise requiring an intimate knowledge of the industry concerned, its technical characteristics and its economic situation, then his need of assistance becomes obvious. If he continues to depend only on himself, the danger of an incorrect decision, which may have far-reaching results, is too great.

The result is that the parties appoint representatives who assist the conciliator or arbitrator and take part in his decisions. These are the assessors. A body is thus created, which can take up a definite position towards the parties. This procedure, by which the assessors are appointed either directly by the parties to the dispute, or by the chairman in consultation with them, or by the competent authority, is very widely used and may be relied upon to prove effective for the majority of cases. Regulations of this and similar types are to be found for instance in Germany for the appointment of members of the conciliation and arbitration chambers, under section 7 of the second Order for the Administration of the Conciliation Order of 10 December 1923¹, in the Netherlands², Canada³, and elsewhere. Direct appointment by the parties is naturally also usual for the members of private independent conciliation and arbitration institutions.

¹ But not for the conciliation committees (cf. below, p. 38).

² Section 13, para. 3, of the Act of 4 May 1923 (*Legislative Series*, 1923, Neth. 1).

³ Section 8 of the Act of 12 June 1925 (*ibid.*, 1925, Can. 1).

But this is not the final stage of development. Useful as representatives directly appointed by the parties are, with their expert knowledge of the industry concerned, of the subject under dispute and above all of the strength of the parties, they nevertheless remain, even as assessors, disguised party men who as a rule cannot altogether throw off their dependence on the interests of their party and exercise a free judgment. A more or less dogged struggle inside the institution to win over the chairman can thus easily arise, and the latter is again alone in his decision on matters of any real importance.

This danger can to a certain extent be avoided, usually by providing that the members shall not be directly appointed by the parties but selected from a list made out in consultation with the trade organisations concerned and classified according to industry and occupation, at the beginning of the year, for instance, irrespective of any particular dispute. Regulations of this sort are contained in the legislation of many countries, for instance in the above-mentioned Administrative Order in Germany¹, the Austrian Act of 18 December 1919² and the Belgian Order of 5 May 1926³. The appointment of assessors to the industrial boards in many of the Australian States also usually takes place without reference to any individual dispute, as for instance under the Western Australian Act of 31 December 1927⁴.

Such a procedure undoubtedly loosens direct connection with the parties, but this need not be completely broken, for the members are still often interested in the industry involved in the dispute, and their interest may in many respects coincide with those of the parties. Such an indirect connection may also in certain circumstances interfere with the exercise of an honourable mediation, which is one of the functions of an assessor. It may therefore appear advisable to appoint persons who have no relation whatever with the industry with which the dispute is concerned, and to be content with the fact that such assessors may be regarded as representatives of employers or workers in general, because they belong to either of these classes or because they are in some way connected with them. It is always possible to proceed in this way if, on the failure of the parties to agree on the nomination

¹ Sections 4 and 5 of the second Order for the Administration of the Conciliation Order.

² *Legislative Series*, 1920, Aus. 32, section 3.

³ *Ibid.*, 1926, Bel. 5, section 3.

⁴ *Ibid.*, 1925, Austral. 12, sections 107 and 119.

of assessors, the latter may be appointed by a public authority or by the chairman. This is the case under the above-mentioned Belgian Order, the Canadian Act, the British Industrial Courts Act, and of course others. A discussion on the reform of the German conciliation and arbitration system held at the Ministry of Labour in Berlin in October 1928 showed that this question is one of no small importance. It was then recommended that representatives of the central workers' and employers' federations should be appointed as assessors¹. This would mean that to a very large extent, at least, the assessors would be free from connection with the parties in individual cases.

To sum up, a series of types of assessors has been considered, ranging from those openly responsible to the parties, and behaving accordingly, to those with no direct connection with the parties or the dispute and simply collaborating in the work of conciliation and arbitration as employers or workers or persons related to them.

The partiality of the assessor decreases progressively in this series and makes way for an increasing independence of the parties. Though there is apparently so large a difference in the position of assessors in the various legislative systems between the first and the last stage, there is nevertheless something in common to all, and that is their basic function. It must be established what this basic function is.

First of all, assessors are not mere representatives of the parties to the dispute. It would indeed be objectless to appoint them if they had simply to state the case of their party as in proceedings before a conciliator or arbitrator — if, in other words, they had no other functions.

But neither are they simply expert advisers. If they were, it would suffice for the conciliator to hear their views in the presence of the parties and himself decide whether and to what extent he would give those views weight. That this is not the case is obvious from the fact that assessors are usually competent, to the same extent as the conciliator or arbitrator, to vote on awards ; apparently, therefore, they have to play a more active part.

Nevertheless, with a remarkable exception which will be discussed later, the assessors are not judges. A judge has first

¹ Cf. article by ZIMMERMANN : " Einigungswesen, Zwangsschlichtung, staatliche Lohnfestsetzung ", in the *Kölner sozialpolitische Jahresschrift*, Vol. VIII, Nos. 1-2, p. 27.

of all, at least according to European practice, to interpret and apply existing law to a certain set of facts. But the question here, as has been mentioned *à propos* of the nature of conciliation and arbitration machinery, is one of creating a legal system to regulate the relations between parties — in fact to a certain extent a legislative function. Assessors have to second the conciliator in this task and they can only do so efficiently under two conditions. First, they must be able, since the parties have more or less influence on their position, to give information on the strength of the parties and their real aims ; and secondly, they must, by their expert knowledge, be able to give advice on the particular nature of the industry concerned, its economic situation and any other facts necessary for a correct judgment of the case.

The activity of assessors therefore consists in the continuation of three functions, which limit and supplement one another : to establish justified party claims, to provide the chairman and the whole conciliation and arbitration institution with the underlying facts of the case, and to support the chairman in his work as mediator.

The regulations in the different countries vary with the degree of emphasis which is laid on one or other of these functions, but the principle — the combination of them all — remains the same.

The remarks on the position and functions of assessors would be incomplete if no mention were made of the remarkable position which the Italian ¹ regulations give to them in labour jurisdiction. According to sections 13 et seq. of the Italian Act of 3 April 1926 on the legal regulation of collective relations in connection with employment ², disputes on collective interests, like disputes on rights, are to be decided by the labour tribunal³. In the Preamble to the Act, the legislature expressly stated that it had tried to go beyond the imperfect stage of arbitration to reach the more perfect form of real judicial decision, which can be exercised only by an impartial judge neither directly nor indirectly interested in the result of the proceedings ⁴.

¹ The same may be the case in Russia and Spain, but it is at present difficult to obtain a clear idea of their regulations on these points because of the lack of necessary documentation.

² *Legislative Series*, 1926, It. 2.

³ Cf. above, p. 33.

⁴ For wording, see the extract from the memorandum mentioned above, p. 33.

The two experts on economic and labour questions who sit on the labour tribunal besides the three ordinary judges are appointed by the president from a register drawn up in the manner prescribed. It is specified in the Act¹ that no person who is "directly or indirectly affected by a dispute" may act as an expert member of the tribunal dealing with it.

In this case therefore the assessors are judges on the same footing as the professional judges and it is their duty to help in reaching a decision by means of their expert knowledge.

In some Australian arbitration courts the assessors chosen from among employers and workers have also in various respects a quasi-judicial position. Although the decisions of these courts are not judgments in the legal sense, they are nevertheless binding on the parties and resemble judgments both in origin and in form. The assessors are sometimes actually described as "members" of the court, are required to take the oath, and receive like the presiding judge a fixed salary during the three years which constitute the usual term of office².

The assessors of the Australian Commonwealth Conciliation and Arbitration Court are professional lawyers and their position is in every way that of judges³. This is, however, not equally true for assessors in all these States with compulsory arbitration and conciliation systems — not, for instance, in South Australia, where they are not described as members of the court, and where it is specified⁴ that "a person shall not be disqualified for appointment as an assessor on the ground that he is a party to the industrial matter or is a member of an association which is a party to the industrial matter".

The particular and general qualifications which are required of conciliators and chairmen of conciliation and arbitration bodies, and the problems connected with their appointment, were considered at length in the discussion on their position⁵. What was said of them may be applied to assessors, in so far as their position, generally indicated above, displays no special

¹ Sections 14 and 15.

² Cf. for instance, sections 43, 49 and 57 of the Western Australian Act of 31 December 1925 and sections 65, 72 and 73 of the New Zealand Act of 1 October 1925.

³ Sections 12 et seq. of the Australian Commonwealth Act of 22 June 1926 concerning arbitration and conciliation.

⁴ Cf. section 15 of the Act of 6 January 1926. The same is true for New Zealand, section 41, para. 7, of the above-mentioned Act.

⁵ Cf. pp. 25 et seq.

features of its own. The obligations of official discretion and of fulfilment of functions are the only points which call for further discussion.

The assessor's obligation to observe official discretion is amply provided for in the legislation of a number of countries and is also implicitly assumed in countries where, as in Germany, it is not prescribed ¹. When expressly specified it is guaranteed in the same way as in the case of conciliators and chairmen of conciliation institutions ².

When the assessors are to a large extent representatives of the parties, the obligation to discretion is, for practical reasons, not considered as so important (in Germany for instance); but the further their position removes them, as described above, away from connection with the interests of the parties, the more necessary it is to require discretion towards the public and the parties to the dispute in respect of the confidential information which they acquire in the exercise of their functions. The obligation is particularly important in cases where the conciliation and arbitration institution is given wide powers to enquire into the facts, take evidence, and call on the parties to give information and produce documents, as in Australia and New Zealand with their compulsory systems and in Great Britain, Canada and other countries which have established a special investigation procedure for which the institution concerned is given the necessary powers. Where, as in Italy, the assessors of the labour tribunal are actual judges, the obligation to discretion is a matter of course.

The obligation to serve when appointed has also a special importance for assessors, so far as their connection with the interests of the parties may tempt them to evade responsibility for a decision against their party by non-appearance, abstention from voting or some other form of non-co-operation. Many Acts provide for penalties in order to prevent this evasion of responsibility ³. A fine is usually the penalty for the failure of an assessor to carry out his functions, the maximum in Australian legislation being

¹ Cf. DERSCH : *Die neue Schlichtungsverordnung*, second edition, 1925, p. 464 ; also FLATOW-JOACHIM : *Schlichtungsverordnung*, 1924, note to section 4 of the second Administrative Order of 29 December 1923.

² Cf. pp. 34.

³ Cf. the Australian Acts, particularly concerning assessors in industrial courts and conciliation committees : South Australia, section 178 ; New South Wales, section 18 ; Western Australia, sections 54 and 111 ; Germany, section 4, para. 4, and section 5 of the second Order for the Administration of the Conciliation Order ; the Colombian Act of 4 October 1920, section 25 ; and the Austrian Act of 18 December 1919, section 3, para. 2, section 6, para. 4.

£5. It is, however, questionable whether fines are a satisfactory method, for successful co-operation under such compulsion is improbable. The less the nature of the assessor's position exposes him to the influence of the parties, the smaller is the risk that he may refuse to exercise his functions ; while in systems such as those of the Australian industrial courts and the Italian labour tribunals, where assessors have a judicial or quasi-judicial position, there are naturally no regulations concerning this obligation.

CHAPTER III

THE PARTIES

It was pointed out at the end of Chapter I¹ that the question of the persons who were subject to conciliation and arbitration procedure and who were entitled to use the services of the conciliation and arbitration boards must necessarily have an influence on the form, character and success of the procedure. It may therefore conveniently be discussed here between the description of the bodies concerned and the study of the procedure, which will be found in Chapter IV.

The various questions which arise in this connection may be summed up in four essential points : the capacity to be a party to proceedings ; the capacity to conduct proceedings ; capacity in special cases ; the capacity to appear and act in proceedings. While an attempt is made below to discuss these four points, it must be clearly stated at the outset that the legislation on this subject represents a comparatively new province of law, so that there is practically no country in which all the problems have been thoroughly worked out. In many cases, the legislator, far from basing his regulations on such distinctions as the above, has not or has only dimly recognised their existence. Frequently the adoption of such fine distinctions in practice is considered valueless, and it will be seen later that there is a certain justification for this view. It is nevertheless desirable to compare the distinctions which have been made in legislation or in practice.

THE CAPACITY OF THE PARTIES

The question of the parties who may apply to conciliation or arbitration bodies for the use of their services is undoubtedly the most important of the four problems mentioned above. For that reason it is the one which has been most often settled either by implication or by definite regulations in the various countries. The practical issue is whether and to what extent single individuals or

¹ Cf. p. 13.

groups of persons, particularly those who are organised (such as trade unions, the staffs of undertakings, etc.), among the employers or workers have the capacity to be parties to proceedings.

A rapid survey of the most important systems shows at once that great differences exist and that a comparative study must be difficult. On some points, however, interesting comparisons can be made. The tangible result is that the solution of this question is related in a striking manner (even if the similarity does not extend to every detail) to the particular task entrusted to the conciliation and arbitration system in the various countries. It was pointed out in the Introduction ¹ that the ultimate aim of conciliation and arbitration was to create and maintain a community of interests between employers and workers. This general purpose has been differently understood and pursued in the various States.

Originally, conciliation and arbitration had one direct purpose, namely, to prevent and settle trade disputes, whether collective or individual in their nature. When individual disputes led or threatened to lead to trade disputes they were dealt with by the conciliation and arbitration machinery in the same way as collective disputes. No distinction was made between the two types. In both cases the task of the conciliation and arbitration boards was to maintain industrial peace. Later, however, the task was extended. The central purpose remained the same, but in many countries it has been more clearly defined and its scope widened. It was but natural that the development of collective agreements in certain countries and the consequent evolution of the law on that subject should influence the work of the conciliation and arbitration boards. More and more their special task came to be to encourage the conclusion of collective agreements and to assist the parties when they were unable to reach an agreement amongst themselves. Thus, side by side with the original task of maintaining peace, the conciliation and arbitration boards undertook to promote relationships between employers and workers on the basis of collective agreements ².

A further stage of development followed. Where provision was made by law for making the conciliation or arbitration award binding on the parties or where measures were adopted for enforcing

¹ Cf. p. 7.

² The remarks of Mr. SINZHEIMER at the meeting of the Association for Social Reform at Mannheim in October 1929 have been of value here (cf. the publication of the Association : *Die Reform des Schlichtungswesens*, 1930, No. 83 (Jena), pp. 17 et seq.). Cf. also the article by SITZLER, in the *Neue Zeitschrift für Arbeitsrecht*, 1930, No. 1.

such awards, the conciliation and arbitration boards had necessarily to undertake the further task of regulating, on behalf of the State, conditions of labour such as wages and hours of work.

It is instructive to observe that the answer given by different systems to the question of what persons should be entitled to use conciliation and arbitration machinery is closely connected with, if not clearly dependent on, the stage of development (as outlined above) in which the system can roughly be classified.

It will be found that, as a general rule, countries whose systems are restricted to the maintenance of industrial peace permit the machinery to be used not only by industrial associations but also by unorganised groups of persons or by individuals on both sides. In systems in which the other two tasks are taken into account, restrictions are introduced concerning the persons who may make use of the machinery; so that finally, in systems which clearly belong to the third group, only industrial associations of a special type (at least as far as the workers are concerned) are allowed to apply for conciliation or arbitration.

The first group consists mainly of the English-speaking countries, with the exception of Australia and New Zealand. In these countries it would seem that the problem does not arise. A typical example is the Industrial Courts Act of Great Britain¹, section 8 of which defines the trade disputes which are covered by the Act as follows :

The expression "trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person.

This definition makes absolutely no distinction between collective and individual disputes. It is therefore easy to understand why no rules or restrictions have been laid down with regard to the parties. The same conclusion can be drawn from a study of the forms on which applications to the court must be made².

The position is obviously the same under the Canadian Industrial Disputes Investigation Act of 1907 as amended in 1925³. This is shown by a reference to section 2 (e), which deals with the definition of industrial disputes, and section 16 (1) (e) concerning

¹ *Legislative Series*, 1920, G.B. 1.

² Samples of these are reproduced in Sir William MACKENZIE'S book: *The Industrial Court: Practice and Procedure*.

³ *Legislative Series*, 1925, Can. 1.

the representation of workers who are not members of a trade union. Although in these countries there are no definite regulations as to the parties who may make use of conciliation and arbitration machinery, it must be remembered that in practice, in very many cases and particularly in the case of important disputes, the workers will be represented by their trade unions.

Systems of the second group, in which the work of the conciliation and arbitration boards is directed mainly towards the conclusion of collective agreements, cannot perhaps be so clearly defined. The majority of them represent a transition stage from one group to another. Their function in connection with collective agreements is still in course of development, and the preference given to trade unions as parties in the negotiations develops along a parallel course. In this group might be placed Austria, France (the new Bill before the Senate), the Netherlands and Sweden.

The provisions of the Swedish Act of 28 May 1920 seem to show that the right to use conciliation and arbitration machinery is not restricted to any definite organised groups of persons or industrial associations ¹.

Section 111 of the French Bill clearly shows that trade associations have not *ipso facto* rights in this matter. It is only when the dispute concerns an existing collective agreement that the trade unions or the groups which sign the agreement are, *de jure*, entitled to make use of conciliation machinery ². Both France and Sweden have legislation on the subject of collective agreements, and it is probable that in Sweden particularly, where the legislation is of more recent date ³ and where the importance of collective agreements is rapidly increasing, the work of the conciliation and arbitration boards in promoting such agreements will continue to

¹ Cf. section 4 of the Act (*Legislative Series*, 1920, Swe. 6-8).

² In this connection, the following remarks of the Reporter, Mr. CHABRUN, Deputy, are of interest. He said: "There remains the important question of the position of the trade unions with regard to conciliation. As Reporter, I should like to be permitted to explain my personal attitude to the question. I consider that if it were compulsory to invite the trade unions or the federations of employers or workers' associations to take part in the proceedings that would provide an effective guarantee for the success of the proposed measures. My committee and the Government, however, consider that trade associations have not reached a sufficient stage of development to justify such a step.

"At the same time it has been agreed that the parties shall have the right to be represented by agents of their associations and that when the State institutes conciliation proceedings it shall have the right to call upon the industrial associations concerned to collaborate at any stage. This, however, is merely a right which the authorities may exert at their discretion.

"If the dispute arises out of a collective agreement signed by an industrial association, then this association is necessarily a party to the proceedings."

³ Act of 22 June 1928 (*Legislative Series*, 1928, Swe. 2).

extend, so that in practice the workers' associations will appear more frequently as parties to conciliation proceedings. The regulations in the Netherlands under the Act of 4 May 1923¹ may be considered as being at the same stage as in Sweden. There is no definite distinction between collective and individual disputes. When a dispute breaks out which will probably produce or has produced a strike or lock-out by which not less than fifty workers are affected, then conciliation and arbitration proceedings must be taken². Since 1927, legislation has existed in the Netherlands with regard to collective agreements³. This will probably, as in Sweden, lead to an increase in the importance of trade associations in conciliation proceedings, although by law they have no monopoly. The new French Bill clearly aims at preventing such a development.

The Austrian system must also be mentioned in this connection. The preamble to the Conciliation Boards Act of 18 December 1919⁴ stated⁵:

The work of the conciliation boards differs from that of the industrial courts in that the latter have to give a decision on concrete cases, whereas the conciliation boards as a rule have to decide on a dispute with regard to the future regulation of labour conditions for groups of workers or salaried employees. Quite often, however, the decision on a concrete case helps to determine the form of future regulations, so that it is not desirable from the outset to restrict the competence of conciliation boards. It should be left to the discretion of the chairman to decline to deal with the case if it belongs to the competence of a court, and particularly of an industrial court, and if only legal questions are at issue. In such a case, the parties would have the right to appeal to a court after the conciliation procedure had ended, because the awards of the conciliation board have no legal force; it is undesirable for a case to be thus examined by two successive bodies.

In this case also, the right of the workers to make use of conciliation and arbitration machinery is not restricted to organised groups, because the distinction between individual disputes and collective disputes is not strictly applied. In view of the extent to which collective agreements have been adopted in Austria, it will be found in practice that the part played by workers' unions in conciliation and arbitration procedure is very important.

The German regulations on the subject actually state expressly that the purpose of the conciliation and arbitration machinery

¹ *Legislative Series*, 1923, Neth. 1.

² Cf. section 3 (1).

³ *Legislative Series*, 1927, Neth. 2.

⁴ *Ibid.*, 1920, Aus. 22.

⁵ No. 401, Beilagen, Konstituierende Nationalversammlung, cited from LEDERER: *Grundriss des österreichischen Sozialrechtes*, p. 477 (Vienna, 1920).

is to further collective agreements¹. The conciliation and arbitration boards are not permitted to undertake other tasks². This clearly shows that the parties allowed to make use of conciliation and arbitration machinery must be the same parties who have the right to enter into collective agreements, which in German law include agreements for a whole trade and works agreements for a single undertaking³. Consequently, on the workers' side only certain groups, such as trade unions in the case of collective agreements for a whole trade and the staff of an undertaking in the case of works agreements, can take part in conciliation and arbitration procedure. In practice, however, it is only the trade union which plays such a part, because the works agreement is much less important than the collective agreement proper. On the employers' side, it is true, the individual employer has as much right as the federation of employers to be a party to conciliation and arbitration procedure, and in the case of collective disputes concerning a works agreement it is only the individual employer who is competent.

Side by side with the German system stands the Norwegian system, in which the encouragement of collective agreements is definitely laid down as the chief task of the conciliation and arbitration machinery. Since in Norway no distinction is made between general collective agreements and works agreements, it is only trade unions (on the workers' side) which are entitled to be parties to arbitration and conciliation proceedings⁴.

The mention of the German system leads us to the third type of system, in which the existence of the right to issue binding awards and the fact that criminal penalties may be applied to enforce these awards mean that the conciliation and arbitration boards have authority to fix wages and other working conditions. In Germany this function of the conciliation and arbitration boards developed out of their work in connection with the furtherance of collective agreements, because the legislation on

¹ Cf. above, p. 6. Cf. also the article by Mr. WISELL, Federal Minister of Labour, on the possibility of making arbitration awards binding on the parties, in the *Magazin der Wirtschaft*, 17 Jan. 1929: "Reform des Schlichtungswesens". The views expressed by the Minister have, however, been subjected to severe criticism, particularly by the employers.

² Cf. section 8 of the second Order for the Administration of the Conciliation Order of 29 December 1923 (*Reichsgesetzblatt*, 1924, p. 9).

³ Only agreements covering a whole trade are, strictly speaking, collective agreements with the peculiar legal effects of such agreements (e.g. no possibility of contracting out).

⁴ Sections 6 (3) and 28 (1) of the Act of 5 May 1927 (*Legislative Series*, 1927, Nor. 1).

the subject provided for the possibility of making the awards binding on the parties in certain definitely restricted and exceptional cases¹. In systems of the third group, however, this has become the essential function of the conciliation and arbitration machinery². This group includes the systems in Russia, Italy, and more especially Australia and New Zealand. In the last two countries the task of regulating working conditions is naturally linked up with the minimum wage legislation on which the conciliation and arbitration machinery is in most cases built up.

This conception of the purpose of the machinery has repercussions upon the question of which parties may make use of it. According to the legislation in New Zealand, an industrial dispute means "any dispute arising between one or more employers or industrial unions or associations of employers and one or more industrial unions or associations of workers in relation to industrial matters"³. Consequently, the party to a dispute referred to a council of conciliation or a court of arbitration must logically be, on the workers' side, an industrial union, which must, moreover, have been registered⁴. The question is regulated in a similar manner in New South Wales, where, it would appear, only registered unions of workers may be parties to the proceedings⁵. The rule is not so strictly observed in the other Australian States. In Western Australia⁶, for example, the right is not reserved for registered industrial unions if there are no such unions in the trade in which the dispute occurs⁷. At the same time, the whole Act is based on the assumption that the parties to the proceedings are industrial unions or associations, as is only natural in view of the definition given to industrial disputes, which is practically the same as that quoted above for New Zealand⁸.

¹ For details, see below, pp. 115 et seq.

² It is a well-known fact that this function of conciliation and arbitration in regulating working conditions is the point which is most hotly discussed in Germany and which is particularly strongly contested by the employers. Opinions are divided as to its effects. In any case, it is not prescribed as the main function by the legislation on the subject (cf., for example, *Die Reform des Schlichtungswesens*, Vol. 83 of the publications of the Association for Social Reform, Jena, 1930). The question is thoroughly discussed again in Chapter VII.

³ Act of 1 October 1925 (*Legislative Series*, 1925, N.Z. 1).

⁴ Cf. sections 39 (2), 77, 5 et seq. (industrial unions), and 26 (industrial associations).

⁵ Cf. section 31 (2, b) of the Act of 18 March 1926 (*Legislative Series*, 1926, Austral. 7).

⁶ Act of 31 December 1925 (*ibid.*, 1925, Austral. 12).

⁷ Cf. section 59a (court of arbitration) and section 120 (3) (conciliation committees).

⁸ Cf. section 4, section 81 (1a), and section 89, which clearly show the predominant position of industrial associations on the workers' side.

In other States of Australia the situation is very similar. Such differences as exist may be partly explained by the fact that the definition of an industrial dispute is not always so strict as in New Zealand or that the conception of a trade dispute originally taken over from the legislation of Great Britain¹ may to a certain extent still carry weight. This is the case, for example, in South Australia, where the right to be a party to conciliation and arbitration procedure is not restricted to registered unions of workers². At the same time, the general tone of the legislation emphasises the right of registered industrial unions to be parties to the proceedings, whereas on the employers' side, as in all the cases previously mentioned, individual employers also enjoy that right³.

A very perfect example of the reciprocal relationship between the tasks of the conciliation and arbitration system and the determination of the parties to the proceedings is to be found in the Italian system of labour jurisdiction (*magistratura del lavoro*), contained in the Act of 3 April 1926 concerning the legal regulation of collective relations and the Administrative Decree of 1 July 1926⁴. The conciliation and arbitration system, which in Italy in the last resort takes the form of legal proceedings before the labour court, fulfils all the three tasks of maintaining industrial peace, encouraging collective agreements and regulating working conditions. Consequently, it will be found that even on the employers' side it is only recognised associations which may take part in the proceedings⁵.

In Russia only the trade unions may appear before the chambers of conciliation or the arbitration courts in the case of collective disputes. In Russian law there are no associations of employers, so that on the employers' side the individual has the right to be a party to the proceedings. It must, of course, be remembered that in practice, in the majority of cases and at least in the most important ones, the trade unions will be opposed by a State undertaking or an association of such undertakings.

¹ Cf. above, p. 46.

² Cf., for example, sections 5 (1) (definition of industrial disputes), 17 (1, b) and 176 (2, c) of the Industrial Code of 1920, as amended by the Act of 6 January 1926 (*Legislative Series*, 1926, Austral. 1).

³ Cf. also *Freedom of Association*, Vol. V, pp. 301 and 310 et seq.

⁴ *Legislative Series*, 1926, It. 2 and 5.

⁵ Cf. section 17 (1) of the Act which states that when no recognised industrial associations exist, a special commissioner shall be appointed by the president of the court. It is only in this exceptional case that the intervention of individuals is permitted.

There can be no doubt that such an association has the right to be a party to conciliation or arbitration proceedings¹.

In conclusion, a word might be said as to the real reason for this connection between the tasks of the various conciliation and arbitration systems and the question of who may be a party to the proceedings. The reason is probably as follows: the more the task of conciliation and arbitration machinery is extended from the simple maintenance of industrial peace to the conclusion of collective agreements and thence to the official regulation of working conditions, the more necessary it becomes to have as parties to the proceedings responsible organisations which can apply the agreements arrived at or the awards issued by the boards. This necessity becomes particularly clear when the enforcement of the decisions of the conciliation and arbitration authorities is guaranteed not only by civil measures but also under criminal penalties, as is the case in Italy and in most of the Australian States. In such a case the legislator has to make sure that on the workers' side he is dealing with organised groups which can be held liable for the non-observance of the decision and for the outbreak of any illegal strikes. This is the reason why section 5 of the above-mentioned Italian Act states that recognised associations of workers shall be bodies corporate. For the same reason many of the Australian States and New Zealand provide that the industrial unions must be registered before they can take part in conciliation and arbitration proceedings. This is also an example of the close connection between conciliation and arbitration and the right of combination for trade purposes. When it is not one particular trade association which can apply for proceedings to be instituted, as is the case in Italy, Russia and, under the new Labour Code of 26 August 1931, in Mexico², but a theoretically unlimited number of associations, as in Germany or the Netherlands, then doubts may arise in individual cases as to whether one given association is entitled to be a party to the proceedings according to the law of the land. This question is practically the same as the question of the right to conclude collective agreements, which has already been dealt with in the study on freedom of association, so that it will suffice to refer the reader to that work³.

¹ Cf. the monograph on conciliation and arbitration in Russia. Cf. also ZAGORSKI: *Wages and Regulation of Conditions of Labour in the U.S.S.R.*, pp. 58 et seq. (International Labour Office, Studies and Reports, Series D, No. 19).

² Section 43.

³ Cf. *Freedom of Association*, Vol. 1, pp. 105 et seq.

CAPACITY TO CONDUCT PROCEEDINGS ; CAPACITY IN SPECIAL CASES ; CAPACITY TO APPEAR AND ACT IN COURT

In comparison with the question just dealt with, the problem of the representation of the parties is relatively unimportant and may be quite briefly dismissed. It includes the capacity to conduct proceedings, the capacity in special cases and the capacity to appear and act in court. In this connection the capacity to conduct proceedings will mean the capacity to make statements and perform other acts with legal effect during the course of the conciliation and arbitration proceedings. It will generally be found that the parties which may institute proceedings have this right. If, as is often the case on the employers' side, an individual is a party, then it is obvious that he has the capacity to conduct proceedings. When, as on the workers' side, the parties are generally groups of persons or associations, their elected or constitutional representatives conduct the necessary legal proceedings. There would be no need to mention the question at all were it not for the fact that certain States, such as Australia and New Zealand, have special regulations concerning the right of the associations and their constitutional representatives to institute and conduct conciliation and arbitration proceedings. This right is made dependent on the fulfilment of certain definite conditions which exceed those required by the constitution of the association for taking ordinary decisions. As a single example of this, section 105 of the Act of 31 December 1925 for Western Australia may be quoted¹, which reads as follows :

(1) No industrial matter (including any application for the enforcement of any industrial agreement or award of the Court) or dispute shall be referred to the Court by an industrial union or association, otherwise than pursuant to a resolution of the governing body of such industrial union or association.

(2) In the case of an industrial dispute, such resolution shall be published in a newspaper circulating in the district in which the registered office of the union or association is situated.

(3) If, in the case of an intended reference by an industrial union, a request in writing signed by not less than ten per centum of the union is made to the governing body within fourteen days after such publication to submit the matter of the intended reference to a ballot of the members, such ballot shall be taken in the prescribed manner, and the dispute shall not be referred to the Court unless a majority of the members who record their votes vote in the affirmative.

¹ *Legislative Series*, 1925, Austral. 12. Cf. also New Zealand, sections 41 and 108 of the Act of 1 October 1925 (*ibid.*, 1925, N.Z. 1), and Rumania, section 7 (3) of the Act of 4 September 1920 (*ibid.*, 1920, Rum. 4).

(4) In the case of an association, if within fourteen days after the publication of such resolution a majority of the industrial unions represented on the association, at special meetings to be called for the purpose of taking such resolution into consideration, pass resolutions forbidding the reference, the dispute shall not be referred to the Court.

It is a noteworthy fact that such regulations exist in countries which prohibit industrial disputes and enforce arbitration awards under criminal penalties. This can be at least partly explained by the fact that under compulsory conciliation and arbitration systems the institution of proceedings involves very heavy responsibilities and very serious legal consequences, so that it is important to be certain from the outset that the parties are prepared to accept such responsibility.

The question of the person or institution possessing the capacity in any particular case to institute and conduct proceedings is, as far as can be seen, a very minor one, and of little interest in the present connection.

The problem presumably gives rise to difficulties only when trade associations are divided by grave political or other differences and are fighting with each other for a monopoly in the representation of the workers, so that they have no united policy in industrial disputes. It may then happen in certain cases that different and perhaps contradictory demands are put forward by different organisations, each of which asserts that it is the real and perhaps the only representative of the workers in question. The question might also arise with regard to the relationship between a central trade union and its local section¹. The provisions mentioned above in connection with the capacity to be a party to proceedings are also intended to meet this present difficulty².

The question of the capacity to appear and act in court, in so far as it is expressly mentioned, has been very simply solved in practically every conciliation and arbitration system. In principle, the capacity of the parties and their representatives to appear and act in court is subjected to the same conditions as are required for ordinary business representation. As far as can be ascertained, no compulsion, such as may exist in civil cases, exists in this connection to be represented by a lawyer or by some other person with special legal training. In many cases lawyers and other agents are expressly prohibited from appearing, since the disputes submitted to conciliation and arbitration boards

¹ Cf. KASSEL : *Arbeitsrecht*, p. 358 (3rd edition).

² Cf. above, p. 53.

are not disputes on rights but disputes on interests, in which legal questions rarely, if ever, play an important part. Thus, in the German system lawyers may not even assist the parties unless they happen to be employees of the party in question. If the parties do not appear themselves or are not represented by their constitutional representative, the only other persons who may be sent to take their place are the secretary, a confidential agent, the manager, or some other official, and in particular the officials of trade associations ¹.

This rule is not so strictly applied in other cases. In New Zealand barristers or solicitors may not appear before the conciliation council, but they may before the arbitration board subject to the agreement of all the parties ². A similar regulation exists in the Australian Commonwealth Conciliation and Arbitration Act ³, and in the Acts of Western Australia and South Australia, where the restriction does not apply when the court is sitting for the trial of an offence against the provisions of the Act, such as failure to accept an award ⁴. In Norway ⁵ and Great Britain ⁶ the permission of the authorities is required in each case before an advocate may appear. According to Canadian legislation, no counsel or solicitor is entitled to appear or be heard except with the consent of the parties and subject to the discretion of the board ⁷.

No restrictions of this kind are imposed by the Austrian Act of 18 December 1919 ⁸ or by section 73 of the Italian Administrative Order of 1 July 1926 ⁹ concerning the procedure before the *magistratura del lavoro*. Sometimes the number of possible representatives and lawyers is limited. Such a provision obviously aims at preventing the procedure from becoming unnecessarily clumsy through the participation of a great number of persons.

¹ Cf. section 15 of the second Order for the Administration of the Conciliation Order of 29 December 1929.

² Cf. sections 47 and 79 of the Act of 1 October 1925 (*Legislative Series*, 1925, N.Z. 1).

³ Section 38 (i) of the Act of 22 June 1928 (*ibid.*, 1928, Austral. 2).

⁴ Cf. section 65 of the Western Australian Act of 31 December 1925 (*ibid.*, 1925, Austral. 12) and sections 25 to 27 of the South Australian Act of 6 January 1926 (*ibid.*, 1926, Austral. 1).

⁵ Sections 17 and 34 of the Act of 5 May 1927 (*ibid.*, 1927, Nor. 1).

⁶ Section 8 of the standing orders for industrial courts.

⁷ Sections 39 and 41 of the Act of 12 June 1925 (*ibid.*, 1925, Can. 1).

⁸ *Ibid.*, 1920, Aus. 22.

⁹ *Ibid.*, 1926, It. 5.

CHAPTER IV

THE INSTITUTION OF PROCEEDINGS

The following discussion of the proceedings themselves, to which the remarks contained in the two foregoing chapters on the conciliation and arbitration machinery and the parties concerned have acted as an introduction, will be arranged according to their successive stages ; Chapters IV, V and VI will deal in turn with the institution, the course and the conclusion of the proceedings. The characteristic principles on which such proceedings are based will also be discussed as occasion arises. These are often not actually specified, and deviate considerably from those governing the practice of civil and criminal law in most civilised States. It may be noted as a general rule that conciliation and arbitration institutions do not accept the fundamental formalism of such practice, though it must not be forgotten that the various systems do not apply the principles of procedure uniformly. The more use a system makes of compulsion, either in the course of the proceedings or in the execution of the awards, the less is it possible, as will be understood, to avoid a minimum of application of the rules of procedure ; this will become evident in the course of this survey.

Conciliation or arbitration proceedings can be set in motion in three ways : an application may be made by the parties to the dispute (either both sides in conjunction or one side only) ; a public authority may give the necessary instructions ; or the court or board itself may open proceedings *ex officio*.

APPLICATION BY THE PARTIES

The opening of the proceedings through an application to a conciliation or arbitration institution by the parties is everywhere the usual course, though there is practically no example of such application being the only method. Perhaps the still valid French regulation in the Act of 21 June 1924 ¹ (Act of 27 December 1892

¹ *Legislative Series*, 1924, Fr. 3.

respecting conciliation and arbitration in collective disputes, except section 16) might be taken as an instance, but here too an official intervention on the part of the justice of the peace is provided for as soon as the actual conflict has broken out¹. It is true that in Canada the initiative of the parties is necessary to set the machinery in motion, so far as the dispute is covered by the Industrial Disputes Investigation Act of 12 June 1925, for according to section 5, a conciliation and investigation board can only be established by the competent Minister at the request of one or both parties to the dispute; but it is to be noted that there is other legislation on the subject, particularly in the individual provinces², and that this supplies the deficiency. Canadian legislation also makes it compulsory to a certain extent to notify disputes and apply for settlement.

The *form* of the application is extremely varied. In most systems there is no prescribed form — in those of Austria, Finland and Germany, for instance, and apparently almost all countries, such as Great Britain and some other English-speaking States where the proceedings are voluntary and there is no compulsion. As will be seen from the description of the proceedings in detail, conciliation and arbitration are in general distinguished by the freedom and adaptability of the forms they take. Since it is important to bring the parties to negotiate so far as possible of their own free will — and this is the first object even where the institution is armed with highly developed powers of compulsion — they must not be hindered by formalities. This point is particularly important in respect of application to the institution by the parties. Section 106 of the Western Australian Act of 31 December 1925³ is characteristic of this disregard of forms. It runs as follows :

Proceedings in the Court shall not be impeached or held bad for want of form, nor shall the same be removable to any court by *certiorari* or otherwise; and no award, order, or proceeding of the Court shall be liable to be challenged, appealed against, reviewed, quashed, or called in question by any court of judicature on any account whatsoever⁴.

It is of interest to compare this with section 89 (9) of the New Zealand Act of 1 October 1925 :

The Court may, in its discretion, waive any technical irregularity or omission which may have occurred in the submission or reference

¹ Section 113.

² Cf. monograph on Canada.

³ *Legislative Series*, 1925, Austral. 12.

⁴ Cf. section 65 of the Canadian Act (*ibid.*, 1925, Can. 1).

of a dispute to the Court, provided that the provisions of this Act referring to the particular matter in regard to which the irregularity or omission has occurred have been substantially complied with.

There are, however, more exact regulations on this subject. A written application is required, for instance, by the Netherlands Act of 4 May 1923, and detailed formalities are prescribed by many of the Acts which provide for compulsion in respect of the actual proceedings and, in particular, of the enforcement of the award. In the latter case the explanation lies, as has been indicated, in the great importance to the parties of the course and result of the proceedings, which to a great extent are independent of their wishes. These wishes, and the spirit in which the parties enter the proceedings, are given less consideration, since in such cases there is justification for the assumption that less depends on their goodwill. Reference may be made in this connection to the regulations in New Zealand¹, Italy², and Canada³. Although the Canadian Act does not make the decisions of the conciliation and investigation boards binding, and provides no penal sanctions for their enforcement, the powers of the boards are so far-reaching⁴ that special formalities for the opening of the proceedings — that is, for the appointment of a board — seem nevertheless justified. As the Canadian regulations may be regarded as to a certain extent typical of such exact formalities for application, they are quoted at length :

For the purpose of determining the manner in which, and the persons by whom, an application for the appointment of a board is to be made, the following provisions shall apply :

1. The application shall be made in writing in the prescribed form, and shall be in substance a request to the Minister to appoint a board to which the existing dispute may be referred under the provisions of this Act.

2. The application shall be accompanied by :

(a) a statement setting forth :

- (1) the parties to the dispute ;
- (2) the nature and cause of the dispute, including any claims or demands made by either party upon the other, to which exception is taken ;
- (3) an approximate estimate of the number of persons affected or likely to be affected by the dispute ;

¹ Section 41 of the Act.

² Section 74 of the Order of 1 July 1926 for the Administration of the Act of 3 April 1926.

³ Section 15 of the Act of 12 June 1925.

⁴ See, in particular, sections 30 et seq.

- (4) the efforts made by the parties themselves to adjust the dispute ; and :
- (b) a statutory declaration setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a board, to the best of the knowledge and belief of the declarant a lock-out or strike will be declared, and (except where the application is made by an employer in consequence of an intended change in wages or hours proposed by the said employer) that the necessary authority to declare such strike or lock-out has been obtained ; or, where a dispute directly affects employees in more than one province and such employees are members of a trade union having a general committee authorised to carry on negotiations in disputes between employers and employees and so recognised by the employer, a statutory declaration by the chairman or president and by the secretary of such committee setting forth that, failing an adjustment of the dispute or a reference thereof by the Minister to a board, to the best of the knowledge and belief of the declarants a strike will be declared, that the dispute has been the subject of negotiations between the committee of the employees and the employer, or that it has been impossible to secure conference or to enter into negotiations, that all efforts to obtain a satisfactory settlement have failed, and that there is no reasonable hope of securing a settlement by further effort or negotiations. (1925, c. 14.)

3. The application may mention the name of a person who is willing and ready and desires to act as a member of the board representing the party or parties making the application.

An application by the parties is not always enough to set the machinery in motion. Other conditions have often to be fulfilled.

It is provided in many systems, as an index of the importance of the matter, that a certain minimum number of workers must be affected: fifty in the Netherlands¹, twenty in South Australia², ten in Canada³ and in various Swiss Cantons⁴. Further, the institution is not always bound to act on the application. This is particularly the case if the parties have not exhausted the possibilities of conciliation by means of other machinery at their disposal⁵. But even when this has been done, it still often depends on the discretion of the mediator or some other competent authority whether the institution shall intervene. This is clearly the case in Great Britain, according to the Industrial Court Act of

¹ Sections 3 and 7 (*d*) of the Act.

² Section 17 of the Act.

³ Section 21 of the Act.

⁴ Cf. monograph on Switzerland.

⁵ Cf. above, pp. 16 et seq.

20 November 1919¹. In the Netherlands², too, the State conciliator is not bound to intervene unless he regards a dispute as important enough for his mediation. He has also competence to set up a conciliation council if he considers it necessary³. According to the German regulation (section 12 of the second Order for the Administration of the Conciliation Order), the conciliator is not bound to act unless, in his opinion or in that of the Federal Minister of Labour, the case is of special importance. It should be noted that in some of the Australian systems⁴ and in New Zealand⁵ the arbitration court may refuse to deal with any dispute if it appears that it is trivial. These provisions may be explained by the necessity of maintaining the efficiency of State compulsion by ensuring that it is only used in very important cases.

Nevertheless, the general rule is that mediators, conciliators, conciliation committees or other competent persons or bodies intervene on application by the parties to a dispute. In a number of Acts this is specified as the duty of the institution -- in Germany, according to the provisions on conciliation committees already referred to, in Finland⁶ and in Canada⁷.

Reference may be made in this connection to a remarkable provision in the Danish Act; the official conciliator is here permitted to make his intervention or the continuation of his mediation depend on the condition that there shall be no cessation of work until the negotiations have been declared closed, though this condition need only be fulfilled for one week and not more than once in the course of the same dispute. The British industrial court acts in practice on similar lines in the interests of its prestige.

THE OPENING OF PROCEEDINGS AT THE REQUEST OF A PUBLIC AUTHORITY

Besides the application of the parties to the institution, many regulations provide that a public authority may request the opening of proceedings even when it is not itself a party to the dispute. Public authorities are often directly concerned in disputes through

¹ Sections 2 and 4.

² Section 5 of the Act of 4 May 1923.

³ Section 10 of the Act.

⁴ Cf. section 69 (1) of the Western Australian Act and section 38 (*h*) of the Australian Commonwealth Conciliation Act.

⁵ Section 85.

⁶ Section 4 of the Act of 21 March 1925.

⁷ Section 6 of the Act of 12 June 1925.

State or local undertakings such as gas, water, electricity, transport, etc. ; but the more interesting point is that they may require the opening of proceedings — or intervene during their course — as a non-interested party or as the representative of public interests. Special provisions on this point are often superfluous in systems in which the conciliation and arbitration body is an administrative authority and is obliged to intervene on its own initiative in cases in which the public interest requires it, or can act on corresponding instructions¹. On the other hand, it is quite comprehensible that such provisions occur in systems in which the conciliation and arbitration institutions are of a markedly judicial character and are at least partly independent of the administrative power. In such cases it may be necessary for the State to require the opening of proceedings, intervene during their course and appear beside or, in Italy, instead of the actual parties. The Italian *magistratura del lavoro*², which is undoubtedly an independent court, and the proceedings before the arbitration courts provided for in many Australian Acts³ may be quoted as examples. The Austrian Act⁴ on conciliation boards and the Rumanian Act⁵ also recognise the opening of proceedings at the request of a public authority or of the Public Prosecutor.

THE OPENING OF PROCEEDINGS BY THE INSTITUTION “ EX OFFICIO ”

The possibility that proceedings may be opened in the general interest at the request of a public authority is a step in the direction of giving the institution competence to intervene directly on its own initiative. Provisions to that effect are to be found in almost all arbitration and conciliation systems. Once the State has decided to put at the disposal of the parties to disputes official machinery for their settlement, the step to the *ex officio* intervention of the authority as soon as public interests are affected is not great.

Regulations concerning the occasions on which such intervention should occur naturally vary in many respects. The idea of public interest is vague, its interpretation varies from country to country,

¹ Cf. following page.

² Section 68, subsection 2, of the Act of 3 April 1926.

³ Sections 19 (*c*) of the Commonwealth Act of 22 June 1928, and 17, 1 (*b*), of the South Australian Act of 6 January 1926, and 30 of the New South Wales Act of 18 May 1926.

⁴ Section 12 of the Act of 18 December 1919.

⁵ Section 37.

and the application of the regulations concerning it is therefore far from uniform ; and, in addition, several laws do not regard it as necessary for the public interest to be directly affected by a threatened or actual dispute. According to the Swedish Act ¹ for instance, the intervention of the conciliator is justified if the dispute causes or threatens to cause any considerable cessation of work ; in the Netherlands ² the State conciliator may intervene if he regards the matter as sufficiently important ; while the French Bill ³ provides for the intervention of the competent Minister or prefect in every case in which the parties cannot open proceedings or arrive at an agreement unaided, whether the dispute is of serious proportions or not. Here, too, intervention is only likely to occur in practice when the public interest is somehow affected.

Where the possibility of direct official intervention is provided for in legislation, the conciliation and arbitration institution is also usually bound to intervene in the cases in question. A provision of the Australian Commonwealth Act of 22 June 1928 goes particularly far in this respect. It says (section 16) :

Each judge shall be charged with the duty of endeavouring at all times by all lawful ways and means to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the court has cognisance of them, in all cases in which it appears to him that his mediation is desirable in the public interest.

It is to be noted that the possibility of the opening of proceedings by the institution is almost everywhere limited to the stage of conciliation. As far as can be discovered, only in countries with compulsory arbitration is direct intervention by the institution or by a public authority permitted also at the arbitration stage ; this is the case in the two Australian Acts mentioned above, and in the regulations on the Italian *magistrato del lavoro*. The German regulations may also, perhaps, be classed with these, for there the stages of conciliation, on the one hand, and of arbitration, on the other, are not sharply differentiated. In systems which on the whole dispense with compulsion, the conciliator or conciliation institution may invite the parties to submit to arbitration and assist them in their choice of an arbitrator or in other ways, but cannot open proceedings against the will of the

¹ Sections 3 and 4 of the Act of 28 May 1920.

² Section 5, para. 1, of the Act of 4 May 1923.

³ Sections 10 et seq. of the Bill adopted by the *Chambre des Députés* in 1929.

parties. This is logical, for according to most regulations the opening of arbitration proceedings naturally entails a readiness — usually prearranged — to accept such award as may be made. The official opening of proceedings would in such cases amount to compulsion, which is not recognised by these systems. The regulations in Belgium ¹, Finland ², France (according to the new Bill referred to) ³, the Netherlands ⁴, and Sweden ⁵ may be quoted in evidence. It is characteristic of the Rumanian regulation that the opening of arbitration proceedings is as a rule dependent on the will of the parties, while arbitration in disputes in State, departmental and communal undertakings and establishments and in works of public utility, in which collective stoppages of work are forbidden ⁶, is carried out by the court or board *ex officio*.

OBLIGATION TO NOTIFY DISPUTES AND TO APPLY FOR SETTLEMENT; SUSPENSIVE PROHIBITION OF STRIKES AND LOCK-OUTS

In systems comprising permanent arbitration and conciliation institutions or conciliators, it is naturally the duty of such bodies or persons to keep a close watch on events within their competence and to keep in touch with both employers and workers with whose disputes they may have to deal. Often, as, for instance, in the Swedish Act ⁷, this duty is expressly specified. In this way institutions and conciliators are usually informed in good time of any dispute which is threatening. Nevertheless, many Acts specifically require that notice of threatened disputes should be given to the competent body. The Netherlands ⁸, where this duty lies with the local authorities, and Norway ⁹, where it lies with the parties in cases of “notice to cease work”, may be quoted as examples. Certain Swiss cantons, too, require the parties to notify differences ¹⁰.

The notice to the conciliator, court or board must at the same time contain sufficient information for the latter to “form an

¹ Section 11 (*f*) of the Act of 5 May 1926.

² Section 14 of the Act of 21 March 1925.

³ Section 113.

⁴ Section 22 of the Act of 4 May 1923.

⁵ Section 8 of the Act of 28 May 1920.

⁶ Sections 15 and 16 of the Act of 4 September 1920.

⁷ Section 2 of the Act of 28 May 1920.

⁸ Section 3 of the Act of 4 May 1923.

⁹ Section 28 of the Act of 5 May 1927.

¹⁰ See monograph on Switzerland.

opinion as to the cause, extent and probable consequences of the dispute", as the Netherlands Act has it. In this way it gives the authority concerned a first means of deciding whether or not to intervene *ex officio*.

In a number of countries open disputes (lock-outs and strikes) are explicitly forbidden and deemed to be illegal until all the possibilities of conciliation and arbitration have been exhausted. In countries where they are in any case completely or partially forbidden, it is natural that they should also be prohibited during the official attempts to bring the parties to a settlement. Such important limitations of the freedom of action of trade organisations cannot but have an effect on the conciliation and arbitration proceedings — an effect which is usually expressed in an obligation to give notices of differences or to apply for settlement, either specified or implicit in the law.

The most familiar regulations on the subject are those of the Canadian Act of 12 June 1925 (amending the original Act of 1907), which has obviously had an effect on other legislation, notably that of South Africa and New Zealand. The following ¹ are extracts from the provisions in question :

It shall be unlawful for any employer to declare or cause a lock-out, or for any employee to go on strike, on account of any dispute prior to or during a reference of such dispute to a board of conciliation and investigation under the provisions of this Act, or prior to or during a reference under the provisions concerning railway disputes in the Conciliation and Labour Act : provided that nothing in this Act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lock-out or strike. . . .

Employers and employees shall give at least thirty days' notice of an intended or desired change affecting conditions of employment with respect to wages or hours ; and in the event of such intended or desired change resulting in a dispute, it shall be unlawful for the employer to make effective a proposed change in wages or hours or for the employees to go on strike, until the dispute has been finally dealt with by a board, and a copy of its report has been delivered through the Registrar to both the parties affected ; the application for the appointment of a board shall be made by the employers or employees proposing the change in wages or in hours ; neither of those parties shall alter the conditions of employment with respect to wages or hours, or on account of the dispute do or be concerned in doing, directly or indirectly, anything in the nature of a lock-out or strike, or a suspension or discontinuance of employment or work, but the relationship of employer and employee shall continue uninterrupted by the dispute, or anything arising out of the dispute ; but if, in the opinion of the board, either party uses this or any other provision of

¹ Sections 56 and 57 of the Act.

this Act for the purpose of unjustly maintaining a given condition of affairs through delay, and the board so reports to the Minister, such party shall be guilty of an offence, and liable to the same penalties as are imposed for a violation of the next preceding section.

The Act thus provides for a suspensive prohibition of open disputes, and of changes in labour conditions, in which connection it imposes an obligation to give notice at least thirty days before the proposed changes in conditions and to apply for the appointment of a conciliation and investigation board. The fulfilment of these regulations is indirectly guaranteed by the provision of penalties for the infringement of the prohibition of open disputes. Employers may be fined from \$100 to \$1,000 for every day or part of a day in which an illegal lock-out or change in labour conditions is maintained. Workers who engage in or continue an illegal strike may be fined from \$10 to \$50. Incitement to and assistance in such actions may also be punished with a fine of up to \$1,000 ¹.

Similar regulations are to be found in the legislation of Belgium, India, the Netherlands, New South Wales, New Zealand, Norway, Queensland, Rumania, South Africa and Western Australia, and of Germany in virtue of an Emergency Order issued by the President on 10 November 1930 and equally valid with the actual Conciliation Order ². The regulations naturally vary greatly, in respect of the disputes to which they apply, the definition of lock-outs and strikes on which they rest, the period during which open disputes are forbidden, and the civil, criminal and other consequences of infringement ³.

In Belgium, China, Norway, New South Wales, Queensland and Western Australia, the suspensive prohibition of strikes and lock-outs applies, irrespective of the nature and importance of the undertakings concerned. In Rumania ⁴ the prohibition applies only to undertakings which regularly employ at least ten workers, in Canada to important undertakings with at least ten workers, particularly in the transport industry ⁵, and in India ⁶ and South Africa ⁷ principally to public utility undertakings. In New Zealand there is, besides the general prohibition, a particular obligation to give notice before a strike or lock-out in such undertakings may

¹ Sections 58-60 of the Act.

² *Reichsgesetzblatt*, 1920, p. 1865.

³ Cf. also sections 6 and 10 of the United States Act of 20 May 1926 concerning arbitration and conciliation (railways) (*Legislative Series*, 1926, U.S.A. 1).

⁴ Section 6 of the Act.

⁵ Sections 2 (c) and 2 A of the amended Act.

⁶ Section 15 of the Act of 12 April 1929 (*Legislative Series*, 1929, Ind. 2).

⁷ Sections 11 and 12 of the Act.

begin ¹. The definition of public utility undertakings varies in details which are from an international point of view unimportant. The above-mentioned Order issued by the German President affects only those undertakings which supply the public with gas, water and electricity.

Legislators have frequently found it advisable, in this connection, to facilitate differentiation between open disputes and other stoppages of work. The general definition of lock-outs and strikes in many Australian Acts (New South Wales and Western Australia, for instance) are among the most important. The Western Australian Act runs as follows, that of New South Wales varying from it in detail only :

“ Lock-out ” includes any closing of a place of employment or any suspension of work or any refusal by an employer to continue to employ any number of his workers with a view to compel his workers or to aid another employer in compelling his workers to accept any terms or conditions of employment, or with a view to enforce compliance with any demands made by any employer from any worker. . . .

“ Strike ” includes any cessation of work or refusal to work by any number of workers acting in combination or under a common understanding with a view to compel their employer or to aid any other workers in compelling their employer to agree to or accept any terms or conditions of employment or with a view to enforce compliance with any demands made by any workers on any employer ².

The essential point here is that a cessation of work is a lock-out or strike when it is caused by the efforts of employers or workers to obtain better conditions. The Rumanian Act adds as a further condition that the cessation (lock-out or strike is meant) must affect at least one-third of the workers. According to the Italian regulations a strike means the cessation of work by at least three workers in pursuance of a previous understanding.

But legislators have not in every case been content with such general limitation ; they have also laid down when the cessation or interruption of work is not prohibited. The Canadian Act, for instance, specifies that ³ “ nothing in this Act shall prohibit the suspension or discontinuance of any industry or of the working of any persons therein for any cause not constituting a lock-out or strike ”. The real meaning of such a statement may be seen from the more clearly drafted Western Australian Act ⁴, which runs :

Nothing in this section shall prohibit the suspension or discontinuance (not being in the nature of a strike or lock-out) of any industry or of

¹ Section 126 ; see also section 109.

² This is the text of the West Australian Act ; the text of the New South Wales Act shows no essential differences.

³ Section 56.

⁴ Section 129, subsection 2, first sentence.

the working of any persons therein for good cause independent of an industrial dispute.

According to this Act, on a prosecution for any contravention of this section, "the onus of proof that any such suspension or discontinuance is not in the nature of a strike or lock-out, and that such independent good cause exists, shall lie on the defendant"¹.

Another point of interest is that a simple alteration of labour conditions by the action of one party, employers or workers, is often regarded as equivalent to the declaration of a strike or lock-out. This is the case for instance in Belgium² and Canada³.

The period during which open disputes are prohibited varies. According to the above-mentioned Acts, Belgian, Canadian, Queensland, Rumanian, South African and Western Australian Acts, as also in China⁴ and other countries, strikes and lock-outs are prohibited throughout the period before and during the conciliation and arbitration proceedings and until the moment when it is recognised that the possibilities of settlement are exhausted. According to the German President's Emergency Order, they are even prohibited for three days from the publication of the decision of the "competent conciliation committee". The Belgian regulations display this difference, however, that they do not explicitly prohibit strikes and lock-outs, but attach legal consequences to them only when premature; in effect, they support the opponents of the party which began the dispute⁵.

It is remarkable that the above-mentioned German Emergency Order provides penalties, not for an illegal strike as such, but only for incitement thereto, while in the case of lock-outs the action as well as the incitement is punishable.

A number of countries do not prohibit open disputes for the whole period of the negotiations, but provide only for the observance of certain time limits before which a lock-out or strike cannot be legally declared. This is the case for instance in India⁶, New Zealand⁷ and New South Wales⁸; in the last-named State this time limit applies to strikes only, lock-outs being completely prohibited.

The object of stipulating the observance [of such time limit — usually from a fortnight to a month — before a strike or lock-out

¹ Section 129, subsection 2, second sentence.

² Sections 15 and 16.

³ Section 57 (cf. New Zealand Act, section 109 (c)).

⁴ Sections 33 and 34 of the Act of 17 March 1930 (*Legislative Series*, 1930, Chin. 1).

⁵ For these consequences see below, p. 71.

⁶ Section 15.

⁷ Section 126.

⁸ Section 45.

is permissible, is naturally to give the competent authorities an opportunity to intervene and to settle the dispute by friendly means.

If no time limit is fixed for the prohibition of open disputes, there may be a risk of procrastination, either through the remissness of the conciliation institution or through the obstruction of one of the parties, which may find this a means of reducing its opponent's relative strength. The following provision of the Canadian Act attempts to avert this danger :

If, in the opinion of the board, either party uses this or any other provision of this Act for the purpose of unjustly maintaining a given condition of affairs through delay, and the board so reports to the Minister, such party shall be guilty of an offence, and liable to the same penalties as are imposed for a violation of the next preceding section ¹.

That is to say, the same penalties as are applied to illegal strikes and lock-outs. The Norwegian regulations also deserve notice, for they include a series of safeguards against procrastination providing first of all that :

A strike or lock-out shall not be declared before the expiry of the period of notice, and not in any case until four working days have elapsed since the date when the notice that negotiations had not been begun, or that they had been broken off or that the notice to cease work had been prolonged, was received by the conciliator ².

An open conflict is permitted after this period, though the State or district conciliator may forbid it " if he considers that a stoppage of work will prejudice public interests in view either of the nature of the undertaking or of the extent of the dispute ". If he believes this to be the case, he is obliged to forbid a stoppage ³. It is also provided, as a safeguard against unconsidered and inexpedient prohibitions, that the State conciliator can countermand a prohibition issued by a district conciliator ⁴. After such a prohibition, the competent official is bound to institute conciliation proceedings immediately. Any party which has not failed to take part in the proceedings — by refusal to attend or in any other way — can demand their termination within ten days of the issue of the *prohibition*. This demand must be satisfied within a further four days, and the prohibition is naturally removed at the same time ⁵.

¹ Section 57.

² Section 29, subsection 1.

³ Section 29, subsection 2.

⁴ Section 31, subsection 1, para. 3.

⁵ Section 36, subsection 1.

In countries like Italy¹ and certain Australian States — South Australia², for instance — where strikes and lock-outs are forbidden in general and not only for the duration of the conciliation and arbitration proceedings, the question of a time limit naturally does not arise.

The consequences attached by the legislation of different countries to the infringement of the conditional prohibitions which have been described are largely of a penal nature, though some come under the head of civil or labour law. The different types may also exist side by side. If there are penalties, they take the form of fines or imprisonment or both.

Penalties are provided for the infringement of the suspensive prohibition of open disputes in the legislation of Canada, India, New South Wales, New Zealand, Norway, Rumania, South Africa and Western Australia and in countries with a general prohibition of strikes (cf. Italy and South Australia). While Canada³, New South Wales⁴, New Zealand⁵, Queensland⁶ and Western Australia⁷ provide only for fines, in India⁸, Italy⁹, Norway¹⁰, Rumania¹¹, South Africa¹² and South Australia¹³ imprisonment is also provided for. The penalties vary greatly in the different regulations; the comparatively high fines in the Canadian system have already been mentioned¹⁴; in Australian regulations the maximum fine is usually £500 for associations and employers and £10-£25 for workers; in Italy it is 100,000 lire for employers and 1,000 lire for individual workers, and in Norway 25,000 kroner for employers and workers alike. When imprisonment is permitted it is often used only to punish illegal strikes and lock-outs in public utility undertakings, or it may be particularly severe in these cases (cf. Rumania and Italy). The imprisonment provided for in the different systems varies from one or two months to two years¹⁵, or even under particularly aggravating circumstances — disputes in public

¹ Section 18.

² Sections 99 and 100.

³ Sections 58-60.

⁴ Sections 45 (c) and 46.

⁵ Section 126.

⁶ Sections 86, subsection 2, and 87 (with other penalties).

⁷ Section 129, subsection 1.

⁸ Section 15.

⁹ Section 27.

¹⁰ Section 40.

¹¹ Sections 18 et seq.

¹² Section 22.

¹³ Sections 99 et seq.

¹⁴ Cf. p. 65.

¹⁵ South African Act, section 22.

utility undertakings in which one or more persons are killed — to three years (Italy). The usual maximum sentence is some three months' imprisonment, which can — in South Australia for instance — include hard labour ; while in certain countries (e.g. Italy) the right to occupy official positions may be temporarily forfeited.

As a general rule, not only the actual participants in strikes and lock-outs but also instigators and abettors are liable to fine and imprisonment, and many Acts (cf. Italy) provide for particularly heavy punishment for such persons. The German Emergency Order of 10 November 1920 concerning the cessation of work in undertakings supplying the public with gas, water and electricity provides for the punishment of participants in illegal lock-outs and of persons who are guilty of incitement to illegal strikes and lock-outs¹, while participants in illegal strikes are punishable only if they are guilty of acts of sabotage.

The consequences in civil and labour law which the legislation of many countries attaches to infringement of the suspensive prohibition of strikes and lock-outs also deserve mention.

Under the German Civil Code persons guilty of infringing the much-quoted Emergency Order² are liable for damages. It may be assumed that in other countries, too, a party to the dispute or a third party injured by the infringement of the prohibition, can as a rule claim damages according to general legal principles, such injury to third parties being possible particularly in the case of disputes in public utility undertakings such as gas, water and electricity works and transport services. This question cannot be considered further here, as it would call for a detailed discussion of civil law in the different countries and go beyond the limits of this study.

When there is civil liability for infringement of the suspensive prohibition of strikes and lock-outs, it is based on legal principles outside the special regulations on conciliation and arbitration ; but these regulations themselves sometimes provide for measures based on labour law to guarantee the observance of the prohibition. Belgium and New Zealand are noteworthy examples.

¹ Section 1, para. 2, of the Order.

² It would be beyond the scope of this study to enquire here who may claim damages in virtue of the Order ; on this somewhat obscure and controversial question, cf. the article by VON HILB : "Streik in gemeinnützigen Betrieben", p. 153 of VON KASEL'S *Sammlung von Seminarvorträgen* : "Koalitionen und Koalitionskampfmittel".

In New Zealand the measures relate to the right of association, which they tend to limit appreciably. It must be emphasised that they affect workers' organisations only, and may, though they need not, be taken in addition to the imposition of a fine. They consist in a declaration by the court which inflicts the fine that the registration of the convicted association is suspended for such period as it thinks fit, but not for more than two years. Such suspension has very important consequences. During the period of suspension, the association is "incapable of instituting or continuing or of being a party to any conciliation or arbitration proceedings under this Act, or of entering into any industrial agreement, or of taking or continuing any proceedings for the enforcement of an award or industrial agreement, or of making any application for the cancellation of its registration".

Further "the operation of any award or industrial agreement in force at any time during that period shall be suspended in so far as the award or industrial agreement applies to persons who are members of that union or association, or who were members thereof at the time when the offence was committed in respect of which the said judgment or conviction was given or obtained, and also as far as the award or industrial agreement applies to the employers of any such persons"¹.

These are very far-reaching powers in the hands of the court, which enable it under certain circumstances to put a complete stop to the continued existence of a workers' association. The importance of such measures justifies the provision that the conviction in respect of which they are taken is subject to appeal to the Court of Arbitration on points of fact and of law.

As already mentioned, the Belgian Act does not explicitly prohibit strikes and lock-outs, but simply attempts to induce the parties to make use of all the possibilities of conciliation provided, in that it supports the opponents of the party which engages prematurely in militant action. In the case of premature lock-outs and of strikes, due to the premature change of conditions on the part of employers, the object of the regulation is attained by treating the workers concerned as involuntarily unemployed and — by granting unemployment benefit — placing them in a better position to carry on the struggle forced on them by the employer. In the contrary case, the workers (or the association to which they belong) who prematurely go on strike, or alter

¹ Section 127 of the Act.

conditions, lose their right to support from the unemployment fund and the National Emergency Fund¹.

The measures described above are also used as means of coercion in other respects and will be returned to later as occasion arises.

The obligation to give notice of proposed action and to apply to a conciliation and arbitration institution, together with the related problems dealt with above, called for this comparatively thorough discussion, for in most cases it entails the first important measure of compulsion in the proceedings — a suspensive prohibition of strikes and lock-outs, the observance of which is secured by penalties and other disadvantages. It need hardly be pointed out that this is a very important measure, since it limits the freedom of the parties to engage in militant action at the moment they consider most favourable. The consideration on which it is based, namely, that a settlement after the outbreak of an open conflict is for economic and psychological reasons usually much more difficult than before, certainly carries weight. Nevertheless, it is open to question whether the prohibition of open conflict, even for a limited period only, is the most efficacious method of dealing with the difficulty. In any case one point already touched on must be remembered: an unwise use of the prohibition can lead to great injustice towards one or other of the parties, which may, by the tardiness of the proceedings, be deprived of what would have been at a certain moment favourable chances of success. That the danger of injustice can be completely averted by suitable safeguards has been disputed, particularly by the workers, who have therefore viewed such prohibitive measures with no favourable eye and frequently opposed them.

It must nevertheless be emphasised that such temporary prohibition of open disputes is to be sharply distinguished in principle from a general prohibition of all open disputes combined with compulsory enforcement of the awards of the conciliation and arbitration institutions. The former merely serves to ensure that the institutions will be utilised by the parties to disputes before they begin hostilities, while the latter deprives them completely of their freedom to engage in militant action and leads as a rule to State regulation of all labour conditions. While in most countries the legislature has hesitated to engage itself in these far-reaching consequences — to be described in detail later

¹ Sections 15 and 16.

— it has often thought it useful and important to ensure that parties shall exhaust the possibilities of settlement through the institutions created for the purpose of maintaining industrial peace before they are permitted to take the law into their own hands. It is therefore comprehensible that in the many countries in which a reform of the conciliation and arbitration system is now under consideration, the question of the suspensive prohibition of open disputes as described above is being given considerable attention. Section 55 of the German Draft Conciliation Order of 1921, which did not become law, included an important provision to this effect. It expressly imposed an obligation to apply to the conciliation and arbitration authorities, and declared strikes and lock-outs to be illegal before such application and the publication of the award. Particularly severe restrictions were provided in the case of such action in public utility undertakings and administrative departments, for which the additional condition had to be satisfied, that a vote taken by secret ballot should show a two-thirds majority of employers or workers in its favour ¹. No penalties were provided for, but the application of ordinary civil law would have resulted in the offending party's unlimited liability for damages. During the public discussions now in course in Germany on the reform of the conciliation and arbitration system, similar ideas are being defended particularly by employers, but also by economists. The suspensive prohibition of strikes and lock-outs is described as the "basic safeguard of peaceful negotiation", and the most energetic means — the payment of heavy deposits as security, support of the opponents of the recalcitrant party by statutory prolongation of conditions under the existing agreement — are advocated for its enforcement ².

It is self-evident that this "basic safeguard of peaceful negotiation" should be made use of where conciliation and arbitration institutions are set up by collective agreements between employers and workers. But in itself an infringement of any such provision of an agreement cannot render the offender liable to punishment. In such cases, as a rule, only a civil liability for damages arises, provided that a collective agreement is regarded as a basis for legal claims, and not simply a "gentlemen's agreement", by the law of the country concerned.

¹ Cf. *Reichsarbeitsblatt*, 1921, p. 453.

² WEDDIGEN: *Einigungs- und Schiedsgrundsatz*, pp. 73 and 82 (Munich and Leipzig, 1930), and the quotation made from the *Verhandlungsbericht der Mannheimer Tagung der Gesellschaft für Soziale Reform*.

POSITION WHILE CASES ARE PENDING ; PLEAS OF PENDENCY ;
DETERMINATION OF COMPETENCE ; AMENDMENT OF THE ISSUE

Civil law has found a special term for the situation which arises when proceedings are instituted in a court ; the case is described as *sub judice* or pending. This situation has certain effects on procedure, in addition to which there are usually certain material consequences under civil law. As was explained ¹ above apropos of the distinction between disputes on rights on the one hand and on interests on the other, the function of conciliation and arbitration proceedings is not to validate claims in law but to compromise between conflicting interests. It follows that a decision on rights cannot be pending on such proceedings, and therefore the provisions in civil law connected with the period during which a claim is pending (liability for penal interest, damages for delayed fulfilment of contract, etc.) no longer apply. It must, however, be enquired whether pendency in conciliation and arbitration matters does not have certain effects on procedure. The question is not of great significance and it will be sufficient to pass in review certain more important points which show the difference between these proceedings and civil lawsuits.

In civil law a plea of pendency can be brought in if during pendency a party makes the same claim before another court. In general, it will be necessary to admit this principle in conciliation and arbitration procedure also. It is not practicable for two or more cases concerning the same dispute to be pending at the same time before several bodies. As a rule it will be in keeping with the spirit of conciliation and arbitration if such a situation is officially prevented from arising. In practice its occurrence is most likely where conciliation and arbitration institutions have been set up by agreement. These as a rule have precedence of official institutions, which may intervene only if the private institution has been unsuccessful ².

Certain difficulties may arise in countries like the Scandinavian States and Germany which make a sharp distinction in their legislation between disputes on collective interests on the one hand, and disputes on collective rights on the other, and extend this distinction to practice. Under such circumstances it is possible that a dispute on rights — e.g. arising out of the interpretation of a clause of a collective agreement — may be brought before

¹ Cf. p. 5.

² Cf. pp. 17 et seq.

a labour court and that, while it is pending, the parties apply for settlement to the competent conciliation and arbitration authority. A plea of pendency cannot stay the proceedings in either case, for the objects of the two are not the same; in the first case it is the decision of the court on a point of law, the interpretation of an existing agreement, which is desired, and in the second, a proposal for a new regulation which shall set aside the difference of opinion by way of a compromise.

In order to avoid contradictions in the results of the two proceedings, countries where such overlapping of conciliation and judicial procedure is possible can easily make the opening of the one await the close of the other.

It has already been pointed out ¹ that there is in general more flexibility in the procedure and formalities in conciliation and arbitration than in the practice of civil law. This may also be remarked in connection with pendency.

First of all there is not, as in civil cases, the principle of *perpetuatio fori* — that is, an absolute competence on the part of the institution before which the case is brought, a competence which is inalienable despite an alteration in the circumstances on which it was originally based. On the contrary it is quite conceivable that a dispute which is pending decision by a local conciliation committee and which assumes unexpected dimensions during the proceedings may for this reason be taken over by an institution with competence over a larger area or a wider range of subjects. The German State conciliator, for instance, can act in this way towards a conciliation committee ². A right of a similar sort is invested in many Australian arbitration courts, for they may assign suitable cases to another institution (in Western Australia the Industrial Board) instead of dealing with them themselves ³.

Just as the institution which has undertaken a case does not necessarily remain competent to deal with it, the point at issue is also not absolutely fixed. In civil law an amendment in the issue is not permissible after it has come *sub judice*. But in order to achieve a compromise between the requirements of the parties, which is the object of conciliation and arbitration proceedings, it is essential that the subjects dealt with may be widened or narrowed according to the needs of the case and in the interests

¹ Cf. pp. 56 et seq.

² Section 10, para. 3, of the second Order for the Administration of the Conciliation Order.

³ Section 84.

of adjustment. This necessity makes itself felt in practice and, with one noteworthy exception, it has not been held to call for special provision. This exception is to be found in Australian legislation, as may be seen from the following quotations from the Western Australian and Commonwealth Acts. The Western Australian provision on the subject runs as follows ¹ :

'The Court may at any time before the determination of an industrial dispute of which it has cognisance allow the amendment, on such terms as it thinks fit, of the plaint or of any subsequent proceeding.

And the following provisions ² of the Commonwealth Act are especially significant :

The Court may, at any time before the determination of an industrial dispute of which it has cognisance, allow the amendment, on such terms as it thinks fit, of the plaint or of any subsequent proceeding.

In making an award or order, the Court shall not be restricted to the specific relief claimed by the parties to the industrial dispute, or to the demands made by the parties in the course of the dispute, but may include in the award or order any matter or thing which the Court thinks necessary or expedient for the purpose of preventing or settling the dispute or of preventing further industrial disputes.

The reason for believing that an explicit regulation was essential is illuminating. It is this : the arbitration court procedure of these States is modelled largely on judicial procedure, and therefore the particular requirements of conciliation and arbitration would perhaps not have received due consideration if variation from the rules of judicial procedure had not been expressly allowed on important points — here, those of alteration in the charge and limitation of the subject.

In this connection the freedom of action which New Zealand and Australian legislation allows to the arbitration courts with regard to admitting parties to, or excluding them from the case, should also be noted. The New Zealand Act is particularly significant for it lays down that "in order to enable a council or the court the more effectually to dispose of any matter before it according to the substantial merits and equities of the case, it may, at any stage of the proceedings, of its own motion or on the application of any of the parties, and upon such terms as it thinks fit, by order . . . direct parties to be joined or struck out . . . " ³

¹ Section 71.

² Section 38, A and B.

³ Section 113, subsection 1 (a).

CHAPTER V

THE PROCEEDINGS

GENERAL CONSIDERATIONS

The proceedings themselves are that part of the conciliation and arbitration machinery which includes the hearing of the parties or their representatives, the interrogation of witnesses and experts, the taking of statements at the scene of the dispute, and the examination of any other evidence concerning the facts of the case and the relative strength of the parties, on which the conciliation proposals or the decisions of the body dealing with the case may be based.

Reference has already been made to the successive stages of the procedure, which are distinguished one from another for practical purposes ¹. These are the stages of conciliation and arbitration, to which a special enquiry stage is sometimes added. It is obvious that the particular functions of each of these stages must have an influence on the manner in which the proceedings, and in particular the elucidation of the facts, should be carried out. Thus, during the conciliation stage it is essential for the court or board concerned to obtain as clear an idea as possible of the comparative strength of the parties as a basis for the proposals for agreement which it has to make ; no doubt exact knowledge of the other circumstances of the case — whether, for instance, an increase of wages in the industry in question is economically practicable or not — may also be very important or even indispensable ². But since at this stage the success of the proceedings depends very largely on the good-will of the parties and their desire to come to an agreement, elucidation of the

¹ Cf. pp. 10 et seq.

² A distinction is made between examination of the comparative strength of the parties and of the circumstances of the case, but it is not forgotten that these two subjects are not mutually exclusive. There is no doubt that the strength of the parties depends very largely on the industrial conditions of the moment, and that knowledge of the latter implies an understanding of the former, and vice versa.

circumstances must be limited very largely to what they contribute on their own initiative¹. This certainly does not prevent the conciliation authorities from being empowered to call upon the parties, to compel them to appear in person, and to impose fines for non-compliance². Compulsory evidence, the examination of books and other such methods are not usually introduced at this stage of the proceedings.

The proceedings are influenced in the opposite direction as soon as the stage of arbitration arrives. If the latter is based on an agreement between the parties — that is, in reality on their desire to arrive at a settlement — or if the award has simply the character of a non-binding proposal to them, this influence is not so marked. But when the proceedings may lead to a State award without the necessity of an agreement between the parties, and when such award is or can be declared binding, then impartial elucidation of the circumstances is of very great importance, all the more so when there are penal as well as civil guarantees for enforcement; and it is less necessary to take the comparative strength of the parties into consideration if it is to be expected that the award will be put into execution by the power and prestige of the State.

In such cases the institution bears a grave responsibility. The systems which provide for compulsory enforcement of their awards have attempted to facilitate matters by giving the arbitration authorities considerable compulsory powers and so enabling them to throw all possible light on the actual facts. Such powers include the right to compel the parties to give information and even to produce their books and documents, to proceed to inspection on the spot, to examine witnesses and experts under oath and if necessary under the threat of punishment, and to acquire all the relevant information by compulsion if required. The regulations in Australia and New Zealand are typical examples, as will be seen later, and the same may be said of those in Italy, where the procedure of the *magistratura del lavoro* has completely taken on the character of that of a court of law.

Finally, the stage of enquiry, which is subject to separate regulations in Canada, Great Britain and other countries, shows similar features. This is natural, for its purpose is also a complete

¹ WEDDIGEN: *Einigungs- und Schiedsgrundsatz*, pp. 31-32 (Munich and Leipzig, 1930), very rightly calls attention to this.

² Cf. section 16 of the German second Order for the Administration of the Conciliation Order.

and unbiassed elucidation of the conditions and the drafting of a report thereupon, on the basis of which the public may form an opinion and so exercise moral pressure on the parties.

These ideas have been touched on here in a preliminary way so as to bring out the connection between the separate points discussed later, and to facilitate an understanding of the whole. It must again be emphasised that the boundaries between conciliation and arbitration proceedings are not always sharply defined in practice, and often merge insensibly one into the other, as for instance in the German system ; and that the nature of the conciliation proceedings is frequently affected by the prospect of arbitration. If the failure of conciliation is to lead directly to arbitration, it is inevitable that the former proceedings, in respect of powers for the elucidation of facts, take on features which in reality belong to the latter. This tendency is particularly marked in systems which provide for compulsory execution of the awards ¹. On the other hand, the complete separation of the regulations governing the two stages of the proceedings ² shows that many systems regard conciliation and arbitration as essentially distinct one from the other.

For the sake of completeness, mention may here be made of the frequent distinction between preliminary proceedings, formal proceedings and supplementary proceedings. Preliminary proceedings are the informal efforts at mediation undertaken by the conciliator or chairman of the conciliation body ; formal proceedings are all those which take place before all the members of the conciliation committee, adjustment board or whatever the authority may be ; while supplementary proceedings — those which take place after the foregoing — only exist, so far as is known, in Germany ³. Their purpose is to allow the parties a last chance to meet and to come to an agreement before the decision, provided for in German legislation, whether the award is to be declared binding.

This is a practical distinction but, except in so far as it coincides with the distinction between conciliation and arbitration referred to above, it raises no legal peculiarities and therefore needs no further mention.

¹ Cf. New Zealand Act, section 46, subsection 10.

² As in Australia, Belgium, Finland, France, Great Britain, Netherlands, New Zealand, Rumania and Sweden.

³ Cf. also, however, below, p. 106 (section 77 of the Western Australian Act).

PARTICULAR PRINCIPLES ; INFORMALITY, OFFICIAL ACTION, INVESTIGATION, THE TAKING OF EVIDENCE, PUBLICITY, ORAL PROCEDURE, DIRECT COMPETENCE, RAPIDITY

Besides the above-mentioned distinctions between the various stages, the principles which govern the proceedings call for brief treatment.

Attention was drawn above¹ to the principle of informality in conciliation and arbitration systems. The remarks made there are equally true of the actual proceedings and it is only necessary to add that conciliation and arbitration procedure is, as far as form is concerned, much freer than civil procedure, but that this freedom decreases nearly everywhere with the growth of powers of compulsion. The most obvious example of this tendency is the Italian *magistratura del lavoro*, in which the procedure has become that of a court of law. The formalities are in fact prescribed in detail², though they still leave much more freedom than is usual in criminal and civil law. There is thus a close reciprocal connection between the degree of informality and the nature of the proceedings ; the stronger the tendency away from conciliation and towards arbitration — or towards judicial proceedings proper, as in the case of the *magistratura del lavoro* — the more limited is the application of the principle of informality.

The practical reason for this informality was given above — the need of making the proceedings as convenient as possible for the parties, and this consideration carries additional weight in so far as the success of the proceedings depend on their good-will. But a more essential reason lies in the very nature of conciliation and arbitration. As has often been pointed out, its object is not the application of existing rules of law, but the creation of new law for the parties. It is clear that this law-giving function can only be carried out satisfactorily if the procedure which leads up to it shows great freedom from formality. This need makes itself inevitably felt even in countries like Australia, New Zealand and especially Italy, where the proceedings are more or less assimilated to those of the ordinary courts, though it is significant that in these cases the fulfilment of formalities has an added importance.

In the civil law of most countries the principle of action by the

¹ Cf. pp. 56 et seq.

² Sections 68 et seq. of the Decree of 1 July 1926.

parties is more or less exclusively recognised, that is to say, not only the institution but also the maintenance of the proceedings depend on them, there being no principle of initiative on the part of the court. It has been explained in a former chapter¹ that in the opening of conciliation and arbitration proceedings official initiative is also permitted, and the same is true of their course and conclusion; in the Italian *magistratura del lavoro* provision is even made for the intervention of the Public Prosecutor—yet another expression of the principle of official action. Once the proceedings have been opened at the request of the parties or by official initiative, only official action can do justice to their purpose—the maintenance and promotion of industrial peace in the public interest. To make the steps necessary to the continuation of the proceedings (e.g. the summons of the persons concerned, witnesses and experts) dependent on the action of the parties would run counter to this purpose; and the more the regulations emphasise the interest of the State in the prevention and settlement of labour disputes, and permit compulsion for the attainment of this object, the more striking the contradiction becomes.

While the principle of official action governs the external course of the proceedings, the attitude of the conciliation and arbitration system to the principles of pleading and of investigation determines the method of limiting the subject of dispute and of establishing the facts. The principle of pleading in civil law in most countries is that a court has to base its decision exclusively on the case put before it by the parties, while the principle of enquiry is that the institution is not in principle bound to limit itself to what the parties bring before it, but may investigate facts on its own initiative and limit the subject of dispute as seems useful and necessary for the purposes of the case². The object of conciliation and arbitration could not be attained if the principle of pleading were strictly adhered to; on the contrary, the institution must be in a position to go beyond the one-sided information provided by the persons interested and obtain an independent view of the facts before it can make the parties practical proposals for a settlement. The principle of investigation has therefore to be adopted, and this principle is applied the more completely the more the system

¹ Cf. pp. 61 et seq.

² Cf., in this connection, the remarks on pendency and the amendment of the issue, pp. 74 et seq.

concerned comprises measures of compulsion to secure the enforcement of its awards. The logical basis for this tendency has already been explained in the remarks on the distinction between the two stages of the proceedings — conciliation and arbitration¹.

With regard to the taking and weighing of evidence, there are usually definite rules in civil law, some of them very strict. What has already been said on the principles of informality and investigation makes it obvious that there can be no question of applying such rules to conciliation and arbitration procedure. There is usually no explicit provision on the subject in the Acts concerned, for in view of the nature and purpose of conciliation and arbitration such may well be considered superfluous. As far as can be discovered there are, typically enough, provisions of this sort only in the laws of Australia and New Zealand, for, as has already been mentioned in a similar connection, the arbitration court procedure in these countries very closely approaches that of a court of law, in which the rules of evidence are usually followed on the basis either of custom or of explicit regulations. The dispositions of the Australian Commonwealth and Western Australian Acts are the most characteristic². They are almost identical, the former specifying "that in the hearing and determination of every industrial dispute, the court shall not be bound by any rules of evidence, but may inform its mind on any matter in such manner as it thinks just".

Besides the above-mentioned principles of informality, official action and investigation which are so characteristic of conciliation and arbitration proceedings, a number of other principles may be mentioned. There is no need to discuss them at length, for they are not so important as the others and also apply in the practice of civil law.

The principle of publicity is not consistently applied and in many regulations no mention whatever is made of it. Belgium³ and Norway⁴, for instance, prescribe that proceedings are not to be public.

In Germany, only the "preliminary proceedings" — that is to say, the negotiations between the parties and the conciliator —

¹ Cf. pp. 77 et seq., and WEDDIGEN: *Einigungs- und Schiedsgrundsatz*, p. 63, in which this fact is remarked on in another connection.

² Australian Commonwealth Act, section 25; Western Australian Act, section 67; cf. also South Australian Act, sections 40, subsection 11 (b), and 41 (g); New Zealand Act, section 82 (f); Canadian Act, section 30, subsection 2.

³ Section 13.

⁴ Section 35, subsection 3.

are not public, while the proceedings before the whole conciliation committee of the conciliation court are public in principle ¹, the institution being however permitted to exclude the public if it regards this step as advisable. Similar regulations hold good in Canada ², New South Wales ³ and Western Australia ⁴, where the public may be excluded by the institution or at the request of one party.

In Great Britain arbitration proceedings are not usually held in public, but there is no legislation to this effect ⁵.

Though there may be certain exceptions, it is in general true to say that in systems in which the proceedings resemble or are regarded as equivalent to those in courts of law, as in Australia and Italy, the principle of publicity is recognised on the same grounds as were given for official control of the proceedings, before courts of law, particularly where measures of compulsion are used. On the other hand, this need not be the case if the proceedings have not an authoritative character and when all depends on the goodwill of the parties and their readiness to come to an agreement. This explains the customary privacy of the proceedings in Great Britain, and of the preliminary proceedings in Germany. Such proceedings resemble diplomatic or political negotiations, and their success may often be endangered if the representatives of the parties are hindered by publicity from expressing themselves freely; consideration for the reaction on the public would have too great an influence on the negotiations for a settlement.

As far as can be established, all conciliation and arbitration systems recognise the principle of oral procedure; the parties set forth the subject of their dispute, their claims and their arguments orally before the institution, and the proposal or award of the latter is based on these and not on written claims. Since the foremost object of the proceedings is to bring the parties to an agreement on the basis of a compromise between their respective points of view, this principle requires no further justification. Naturally, it must not be too severely applied to the exclusion of all other forms of procedure, for it is often necessary for the

¹ Sections 20 and 21 of the second Order for the Administration of the Conciliation Order. The "supplementary proceedings" after the award, in which it is decided whether the latter is to be declared binding, are also secret (section 24).

² Section 34.

³ Section 69, V.

⁴ Sections 145, subsection 4, and 146, subsection 5.

⁵ MACKENZIE: *The Industrial Court: Practice and Procedure*, p. 15.

parties, particularly in complicated cases, to tender considerable written evidence, arguments, etc., which may of course be taken into account without oral exposition. Even the demand for a careful written preparation of the case (as in the Italian *magistratura del lavoro*¹) does not run counter to this principle, but is explained by the fact that these proceedings are organised on the lines of a court of law and provided with compulsory powers.

Next, almost all conciliation and arbitration systems recognise the principle of direct competence, according to which the proceedings, including any necessary giving of evidence, take place before the court or board itself and not before other bodies acting at its request or under its instructions. This principle is not apparently specified in any Act, but it is fully in keeping with the nature of conciliation and arbitration, in which the personal or psychological influence of the institution occupied with the dispute plays an extremely important part. This direct influence would be lost if certain parts of the proceedings were undertaken by subordinate bodies, but it must be admitted that the more closely the proceedings resemble those of a court of law — as, for instance, in Australia — and the more the authoritative decision of the tribunal takes the place of a friendly compromise of interests, the less important is this direct psychological influence for the purpose of an understanding between the parties. It is therefore comprehensible that according to the Australian Commonwealth² and Western Australian³ Acts the treatment of a dispute may be passed on from an arbitration court elsewhere (to the local industrial board or to a person selected *ad hoc*) for investigation, taking of evidence and the drafting of a report. It should be noted in this connection that according to the German regulations⁴, after the arbitration award has been given the parties may be heard by a designated body in the “supplementary proceedings” — that is, to decide whether or not the award is to be declared binding.

The principle of rapidity, which is frequently applied in civil law, can perhaps also be applied to conciliation and arbitration. The success of the proceedings is in practice often dependent on the speed with which they are carried through, and in the

¹ Cf. section 74 of the Decree of 1 July 1926 (*Legislative Series*, 1926, It. 5).

² Cf. sections 36 and 37 of the Australian Commonwealth Act.

³ Sections 84 and 85 of the Western Australian Act.

⁴ Section 24 of the second Order for the Administration of the Conciliation Order.

legislation of Canada¹, Finland² and India³ rapidity is specified as one of the particular duties of the competent authority. The regulations for proceedings before the Italian *magistratura del lavoro* also plainly show a tendency in this direction⁴.

THE COURSE OF THE PROCEEDINGS ; OBLIGATION OF THE PARTIES
TO ATTEND ; EXCLUSION OR CHALLENGE OF MEMBERS OF THE
COURT OR BOARD ; MAINTENANCE OF ORDER DURING SESSIONS ;
ELUCIDATION OF THE FACTS

If the proceedings are to be efficiently and successfully completed, certain conditions must be fulfilled. First of all, the parties or their representatives must attend in person ; secondly, a necessary minimum of confidence in the conciliation or arbitration authority can be guaranteed only if partial or otherwise unsuitable persons can be refused the presidency or membership of the court or board ; next, the practical course of the proceedings must be made secure against disturbances by orderly regulation of the sessions ; and finally, the necessary steps must be taken to ensure full elucidation of the facts of the case. These four points will now be considered in turn.

The most important object of the proceedings — agreement between the parties — cannot be attained if one of the parties does not attend ; and in every case in which the State not only puts conciliation and arbitration machinery at the disposal of disputing persons but also attaches value to the use of such machinery, even against the will of one or both of the parties, it must be in a position to compel attendance. This is indispensable in systems which permit the intervention of conciliation and arbitration bodies on their own initiative or at the request of a public authority⁵. There is a risk that compulsion may affect the readiness of the parties to agree, though this depends on the measures used ; and it is therefore for experience and judgment to decide in each case whether and to what extent such measures of compulsion are expedient. Moderation is particularly called for if the success of the proceedings depends on the voluntary co-operation of the parties, which would be endangered by the

¹ Section 23.

² Section 11, subsection 2.

³ Section 7.

⁴ Cf. in particular sections 76, 80, subsections 3-5, and 84 of the Decree of 1 July 1926.

⁵ Cf. above, p. 61 et seq.

careless use of compulsion. Further, while compulsion to attend is conceivable, compulsion to negotiate, which is the ultimate object, is in fact not practicable.

The obligation of the parties to attend is provided for in a number of countries, though in many cases without penalties for infringement (e.g. Denmark¹ and Sweden²). Under certain circumstances it is very important for the parties to attend in person and not to be represented. Regulations in Germany³, Italy⁴ and the Netherlands⁵ take this into account, and in these countries (in Germany only in disputes limited to a single undertaking) the conciliator, chairman of the conciliation or arbitration committee, mediator, arbitrator or labour tribunal (as the case may be) can insist on personal attendance. Non-compliance is usually punished with a fine. Whereas in Germany and Switzerland⁶ only a disciplinary fine is permitted, in Australia⁷ and Canada⁸ the offence is a criminal one and the fine may be very high (\$100 to \$500). According to the Netherlands Act⁹, particularly grave offences may entail a fine of not more than 60 gulden, and also imprisonment for not more than four months. This is all the more remarkable in that this Act does not recognise compulsory arbitration.

Besides the direct compulsion to attend, the legislation of a number of countries provides for an indirect but very efficient pressure in the same direction, in that the proceedings may be carried through even in the absence of one or both of the parties. This is the case in Italy, where the absence of both parties is no obstacle if the Public Prosecutor instructs that the case be proceeded with¹⁰. Under German legislation, an award must be given in the absence of one party if the other party demands it¹¹. In Norway¹², the proceedings continue in the absence of one or both of the

¹ Section 3, para. 2.

² Section 4, para. 2.

³ Sections 15 and 16 of the second Order for the Administration of the Conciliation Order.

⁴ Section 23, para. 2, of the Decree of 1 July 1926.

⁵ Sections 5, subsection 3, 14, subsection 2, 31, 33 and 57.

⁶ Cf. section 31 of the Federal Factory Act of 18 June 1914 (*Basle Bulletin*, Vol. IX, p. 269).

⁷ Western Australian Act, sections 145, 146 (9), and Australian Commonwealth Act, section 16.

⁸ Section 36 of the Act of 12 June 1925 (*Legislative Series*, 1925, Can. 1).

⁹ Section 57.

¹⁰ Section 86 of the Decree of 1 July 1926.

¹¹ Section 21, para. 4, of the second Order for the Administration of the Conciliation Order.

¹² Section 35, subsection 1, para. 2.

parties, and in Canada ¹ and New Zealand ² if without good cause one party fails to attend or be represented.

Finally, many countries require and accept the evidence of the parties under oath, and this amounts to compulsory attendance. More will be said later about the obligation to give evidence ³.

It has already been sufficiently emphasised ⁴, apropos of the position of conciliators and assessors, how important it is for the success of the proceedings that the parties shall have confidence in the institution. It is for this reason frequently provided that under certain conditions persons may be excluded by law from membership of conciliation and arbitration institutions or challenged by the parties. In many regulations the practice of civil law in respect of the exclusion or challenge of judges is applicable. This is particularly comprehensible in countries such as Italy, where the proceedings are organised on the lines of a court of law. The Decree of 1 July 1926 on this subject simply refers to the Civil Procedure Code for the exclusion or challenge of the judges and expert assessors ⁵. The position is the same according to the Finnish ⁶ and Norwegian ⁷ Acts, though under both the proceedings are sharply distinguished from those of ordinary courts of law; the regulations are nevertheless comprehensible, for they refer to conciliators, acting alone, who must be completely independent of the parties, and whose position is one of great responsibility. A similar regulation in Austria ⁸ may be explained by the fact that in that country the conciliation boards also have judicial functions.

The exclusion of a judge from the exercise of his office is provided for in codes of procedure if he is either a party to the dispute or stands in close legal relation to such party (shares its rights or obligations), if the proceedings concern a person to whom he is closely related by blood or marriage, if he is called upon to give evidence as witness or expert, etc. The challenging of a judge is permitted for these reasons, as also on the ground of partiality, i.e. "if there is any reason to justify lack of confidence in the

¹ Section 43 of the Act of 12 June 1925 (1907).

² Section 116.

³ Pp. 90 et seq.

⁴ Pp. 24 et seq.

⁵ Section 67.

⁶ Section 5 of the Act of 21 March 1925 (*Legislative Series*, 1925, Fin. 1).

⁷ Sections 13 and 30.

⁸ Cf. section 4 of the instructions of 19 May 1923 concerning the Standing Orders of Conciliation Boards.

impartiality of the judge" ¹. The Netherlands Act ² provides for the possibility of challenging chairmen and assessors of arbitration courts. The provision is in general terms and is thus widely applicable in practice. It is justified by the arbitrators' considerable powers with regard to the elucidation of the facts and the institution of investigations ³. In such cases it must be possible in practice legally to replace persons who, there is reason to believe, will not guarantee an impartial treatment of the dispute, by others in whom confidence may be placed.

The less judicial the position of the assessors, and the more they resemble representatives of the parties ⁴, deputed or proposed by them as members of a conciliation or arbitration institution, the less possible it is to apply to them the reasons for challenge which are provided in civil law in respect of judges. The value of assessors in such cases is that they are not actual representatives of the parties, but that their duty is to judge the claims of the parties, at whose request they are acting, in the light of the facts and to give these claims their full value. A challenge on the ground of partiality would thus run counter to the purpose of the proceedings; in the German regulations on this point it is only in disputes affecting a single undertaking that an employer or worker in the undertaking is not competent to act as chairman of the conciliation and arbitration committee, conciliator in the preliminary proceedings or assessor and even then he may so act if the parties are in agreement on the subject. In all other cases, the regulations do not provide for the challenging of the assessors, but the chairman may be challenged if doubts arise which "are based on facts connected with the individual dispute and calculated to justify lack of confidence in his impartiality" ⁵. Taken as a whole, the examples given show that it is not always possible to apply the principles of procedure in civil law to the exclusion and challenging of chairmen, and above all of assessors of conciliation and arbitration institutions. Such principles can only be suitably and completely applied in cases where the proceedings are organised as in a court of law. In the much more numerous countries where this is not the case, such strictness is unnecessary,

¹ Sections 41 and 42 of the German Civil Procedure Code.

² Section 28 of the Act of 4 May 1923.

³ Cf. below, p. 96.

⁴ Cf. remarks on the position of assessors, pp. 36 et seq.

⁵ Section 13 of the Second Order for the Administration of the Conciliation Order. The wording corresponds in part with section 42 of the German Civil Procedure Code quoted above.

in particular in respect of assessors, who are in practice seldom challenged on the ground of partiality.

The official in charge of the proceedings — as a rule the conciliator or chairman of the conciliation or arbitration institution — needs at times certain statutory powers in order to keep the proceedings free from disturbances and to punish or expel unruly elements. The more authoritative the proceedings are, the greater this need ; and consequently it is most apparent in those regulations which provide for measures of compulsion for the enforcement of the institution's awards or to some degree prohibit strikes and lock-outs. On the other hand, the more the success of the proceedings depends on the good-will of the parties, the less necessary such regulations are. There is, for instance, no provision of this kind for proceedings before the Industrial Court of Great Britain, and indeed it is not even considered necessary to establish standing orders for this body. The German regulations ¹, apart from making it possible to declare awards binding, which will be discussed later, are built up in principle on the voluntary co-operation of the parties ; the president of the conciliation committee can only fine persons who are guilty of disturbing the proceedings ; and even such fines are subject to appeal. Fines, which are obviously simply disciplinary penalties, are also provided for in the Norwegian Act ², though here it is added that in certain cases a penalty may be imposed under the ordinary criminal code. In Canada ³ the regulations are more severe. An unruly person may be taken into custody by any officer of the conciliation and investigation board, expelled from the hall and detained until the end of the session ; he may also be fined up to one hundred dollars. Similar regulations hold good for New Zealand ⁴ and Western Australia ⁵ while the Australian Commonwealth Act ⁶ provides for much higher fines (up to one hundred pounds), and the South Australian Act ⁷ for imprisonment up to fourteen days for insulting the court, disturbing the proceedings or other unseemly behaviour. It is remarkable that in many countries with compulsory arbitra-

¹ Section 17 of the second Order for the Administration of the Conciliation Order.

² Section 41.

³ Section 37 of the Act of 12 June 1925 (1907).

⁴ Section 14.

⁵ Section 135.

⁶ Section 83.

⁷ Section 124.

tion these steps against direct disturbances are not regarded as sufficient to safeguard the smooth working of the institution. New Zealand ¹ and Western Australia ² have provided for fines of up to fifty pounds for persons who "shall write, print, or publish anything calculated to obstruct or in any way interfere with or prejudicially affect any matter before the Court" ³. The Australian Commonwealth Act even provides that "any person creating a disturbance or taking any part in creating or continuing a disturbance in or near any place in which the Court is sitting" may be punished by a fine of up to one hundred pounds or imprisonment for not more than six months, or both ⁴.

As was explained above ⁵ in detail, the function of conciliation and arbitration is to establish a compromise between the interests of the parties to a dispute and create a new basis for their mutual relations — that is to say, to make law and not, as in the judicial settlement of a dispute on rights, to interpret it. The result is that the elucidation of the facts plays two very different parts in the two types of procedure. In a case in civil law the object is to establish the facts of the case, on which the judge bases his decision in application of the law; but in disputes on collective interests, knowledge of the circumstances is needed to enable the conciliation or arbitration institution to form an opinion as to what regulation of the dispute will first be voluntarily adopted by the parties, or what compulsory solution is likely to be the most just, if need be with due reference to public interests. In the first case, therefore, elucidation of the facts is the basis for a settlement of the legal position by a judge; in the second, it is the basis for the creation of fresh law, whether in the form of an agreement between the parties or of a solution imposed by the court or board on its own authority or directly by the State. This difference arises out of the nature of the two systems and also exists, though often disguised and less marked in effect, in cases where it is not clearly formulated in legislation, or where conciliation and arbitration procedure closely resembles that of a court of law.

The facts may be elucidated in two ways, first by hearing the usually contradictory statements of the parties, and then if

¹ Section 115.

² Section 136.

³ This is the text of the Western Australian Act, that of the New Zealand Act being similar.

⁴ Section 83 A.

⁵ Pp. 2 et seq.

necessary by interrogating witnesses and experts, examining books, taking statements and making other investigations, e.g. into the industrial position of the industry concerned in the dispute.

The hearing of the parties is perhaps even more important in conciliation and arbitration proceedings than in civil proceedings. As has often been pointed out, national regulations, which differ so widely on other particulars, agree on this, that the voluntary agreement of the parties is the first object at which to aim ; and an oral exposition of their points of view is an indispensable condition. This is not, as in civil cases, used by the parties to stake out their legal position, but to obtain an estimate of the opponent's strength and so of the likelihood that it will maintain or reduce its claims. The function of the mediating institution is to find in the expositions of the parties — in which each will describe its position as imposingly as possible — a basis for compromise which both may accept and to overcome psychological obstacles to their agreement. It is noteworthy that under certain systems this work may be done during the proceedings, even by means of a direct consultation (by ballot) of the members of the associations concerned ¹. The position is analogous to that of a political or commercial transaction which is to be concluded by the mediation of an impartial third party. Each party needs the other ; each tries to sell itself as dearly as possible and to give the mediator and the opponent the impression that the opponent needs it more than vice versa. At this stage of the negotiations, when the institution has simply to function as a medium for psychological compromise, the oral exposition of the parties is often quite sufficient to elucidate the facts of the case. It may then be needless, for instance, for the mediator to know what the industry in question is actually capable of ; it is enough for the exercise of his functions, which are purely psychological, to hear the ideas and explanations of the parties on the subject.

The position changes as soon as the mediating institutions are no longer limited to psychological assistance and persuasion, but begin to exert, according to the various methods of the particular systems, some form of pressure on the parties in the direction of a particular settlement. As this pressure increases so also does the part played by the conciliation or arbitration authority in the eventual settlement and with it that authority's responsibility. It can only bear such responsibility if, besides

¹ Cf. section 56 D of the Australian Commonwealth Act.

what it may learn of the psychological position from the exposition of the parties, it is given means of impartially elucidating the facts — means which correspond to the scope of its functions. The change from the former to this latter position often passes unnoticed and becomes evident only when the mediating institution sets in motion official enquiries on the industrial position and the labour market, and attempts to influence the parties by disclosing the information it has obtained. A visible turning point is provided when a court or board is explicitly given the function of investigating conditions in the industry, in order to influence the parties towards agreement on a given basis by publishing the information it obtains. Finally, there is a complete reversal of the situation in the case of systems which, if voluntary conciliation fails, provide for compulsory settlement by the conciliation and arbitration bodies or other competent authority, and must, therefore, allow the latter wide powers for the exercise of this function — for the interrogation of witnesses, the taking of statements on the spot, etc.

Thus, the more the responsibility for the creation of the new legal relation between the interested person passes from those to whom it has to apply on to the shoulders of the conciliation and arbitration bodies, the more impossible it is for the latter to be content with a knowledge of the psychological factors influencing the parties, and the more obviously it becomes necessary for them to elucidate the facts. Systems which provide for compulsory execution of the decisions arrived at during the proceedings thus find it essential to arrange in detail for the introduction of the same principle into the preliminary stages — that is to say, to give the conciliation and arbitration bodies the means of establishing the facts by compulsion if need be.

If the manifold provisions of national conciliation and arbitration legislation dealing with the elucidation of the facts are passed in review, the most frequent impression gained is that the legislators have groped their way step by step without always finding a satisfactory or final solution.

The difficulties begin as soon as the system permits measures of compulsion for this purpose, and vary with the degree of compulsion. The legislator must decide how far he may go in the compulsory investigation of the economic or technical secrets of an undertaking, without running counter to the principle of the independence of private industry, which is still nearly everywhere regarded as sacred, despite the modern development of

the capitalist system and the many limitations and obligations it has brought with it. It is in principle the same problem which is raised in more general and obvious form by the question of the compulsory imposition of awards in collective disputes, and will therefore, be discussed once more in connection with the latter in the final chapter on the principles of conciliation and arbitration ¹.

The above general remarks make it possible to classify the various regulations concerning the elucidation of the facts. They may be conveniently divided into four groups.

The first group includes the regulations in which the proceedings depend solely on the good-will of the parties, while the mediating institution limits itself in the main to overcoming psychological obstacles to an agreement, without intervening in an authoritative way itself. The systems in Great Britain (the Industrial Courts Act) — excepting the enquiry procedure, which will be mentioned later — Denmark, Finland, Sweden and Germany belong to this group. In all these countries the hearing of the parties is the principal method of elucidating the facts, other means in some cases not even being mentioned. When mentioned, they are obviously regarded as of less importance, and in any case depend on the acquiescence of the parties. A guarantee, in the shape of measures of compulsion, that the parties will provide information or that third parties will give evidence or put their expert knowledge at the disposal of the institution, is not recognised in these systems. The regulation in Sweden is typical and runs as follows ² :

The negotiations . . . shall, in the first place, have the object of bringing about an agreement in accordance with the offers or proposals which may be made by the parties in the course of the negotiations. . . . The parties shall make it their business, at the request of the conciliator, to give him extracts from the accounts and other documents together with statistical data, and other facts with which the dispute is concerned, and also to grant him access to the workplaces concerned, in so far as this is necessary in order that he may have a sufficient basis for coming to a decision on the dispute.

The legislators therefore regard direct relations between the conciliator and the parties as the most important part of the proceedings. The elucidation of the facts in other ways is "the business" ³ of the parties — that is to say, they are subject only

¹ Chapter VII, pp. 130 et seq.

² Sections 6 and 7 of the Act.

³ The English translation — "it shall be the duty of the parties" — in the *Legislative Series* is, in this respect, not quite accurate.

to moral pressure, which can however be very effective, for the conciliator may draw unfavourable conclusions from the refusal of a party to assist him with information. Similar provisions are in force in Finland ¹, and the German regulations too belong to this group. They specify that "the points at issue and the facts needed to judge them are to be elucidated by hearing the parties". Only when this seems advisable may the adjustment board "make official enquiries, instruct the parties to submit documents in support of their claims, and hear such witnesses as the parties bring" ². It deserves emphasis that the German Act avoids any compulsion with regard to the elucidation of the facts, although as is known it provides under certain conditions for a declaration that the award imposed on the parties is binding in civil law. It differs in this respect, as will be seen from the subsequent discussion on the fourth group, from other systems which recognise the compulsory imposition of decisions, though in most of these compulsion is carried further and has penal sanctions; and clearly it may thus be grouped with those which attempt to keep to the principle of voluntary agreement between the parties and which therefore have analogous provisions on the elucidation of the facts. The latter thus remains dependent on the voluntary co-operation of the parties.

The Swiss Factory Act makes it compulsory for all parties called on by a conciliation institution to attend, participate in the proceedings and give evidence, though this is guaranteed by disciplinary fines only ³. In this respect the Act belongs to the transition stage between the first and second groups, the latter including the systems which do not recognise compulsion in the execution of awards, but consider it advisable to give the mediating — and in particular the arbitration — bodies wider powers with regard to the elucidation of the facts. The principal systems belonging to this group are those of the Netherlands and Norway, and that for the settlement of disputes on the railways in the United States under the Act of 20 May 1926 ⁴.

According to the Norwegian Act the conciliator has the same powers for the elucidation of the facts as the Labour Court, whose procedure is regulated by the same Act, with the exception that

¹ Sections 9 to 11 of the Act.

² Section 21, para. 2, of the second Order for the Administration of the Conciliation Order.

³ Cf. footnote 6, p. 86.

⁴ *Legislative Series*, 1926, U.S.A. 1.

he cannot put witnesses and experts on oath. Witnesses and experts who have been regularly summoned and who, without sufficient reason do not appear, are fined or made liable for the costs arising out of their absence. The Act also makes it compulsory, on pain of a similar penalty, to submit original documents and empowers the conciliator to investigate at the scene of the dispute and to acquire information in other ways ¹. The board of arbitration under the American Act has similar powers, and can also call on the assistance of the courts if necessary ², but it must not be forgotten that this board is established, not by official initiative, but by agreement between the parties, who thus show their willingness to submit to eventual measures of compulsion. Finally, the Netherlands Act includes detailed provisions concerning compulsion for the elucidation of the facts ³. Witnesses and experts summoned to proceedings before the conciliation board, who fail to appear without good reason, are liable to a fine of up to sixty gulden if an interrogation under oath is not intended ; while a considerable measure of compulsion may be used in the proceedings before the arbitration court, though these can only be instituted on agreement between the parties. Persons summoned to appear, whether parties to the dispute, witnesses or experts, who fail to do so without good reason or refuse to give the information demanded of them, are liable in certain circumstances to imprisonment up to four months. Persons who withhold books, documents, etc., when required to show them are even liable to imprisonment, up to six months, and a fine, up to one thousand gulden. Not only witnesses and experts but also, remarkably enough, persons concerned in the dispute may be interrogated under oath ⁴.

These severe regulations, in particular the right to put even the parties to the dispute on oath, may be explained by the fact that as a rule arbitration is used in disputes which closely affect public interests and are therefore no longer a purely private issue. The provision that the Government conciliator, whose co-operation is required for the opening of arbitration proceedings under the Act, shall refuse such co-operation " if he does not consider the dispute sufficiently important ", also tends in the

¹ Sections 19, 21, 22, 35 and 43.

² Section 7, subsection 3 (*h*).

³ Sections 14, subsection 2, and 57, subsection 1.

⁴ Sections 31, 33, 34, 57, subsections 2 and 3 ; cf. also pp. 96 and 98 (investigation proceedings).

same direction¹. The power to put the parties upon oath and the right of the parties to be so heard are also to be found in the systems belonging to the third and fourth groups; they are in fact inherent in the nature of these systems, as will be seen below.

Besides proceedings before the Government conciliator alone, the conciliation council and the arbitration court, the Netherlands Act also provides for separate investigation proceedings, and thus forms the transition stage from the second to the third group of systems, those which provide a special procedure for the elucidation of the facts. Among others, Canada, Great Britain, India and the United States (the above-mentioned Act on labour disputes on the railways) also provide for such procedure. It is worthy of note that investigation proceedings also take place in many countries which do not specifically provide for them. In Germany — to give one example only — committees of experts have repeatedly been set up in recent years, usually on the basis of an agreement between the parties, and subsidised by the State; they have dealt with such particularly complicated matters as the economic position of the Rhine shipping companies and the transition from the two-shift to the three-shift system in lignite mines². The importance of such investigation has already been briefly referred to³; but a few supplementary remarks will not be out of place here.

Investigation proceedings established by law were originally a peculiarity of the systems of Canada and Great Britain, and are still, as far as can be discovered, most applicable to English-speaking countries. They are a natural outcome of the principles of these systems, which reject State intervention in the adjustment of labour conditions and allow the State to act only as mediator in disputes, unless the parties call it in as arbitrator. The consequent complete dependence on the parties' will to agree must at times cause dissatisfaction, particularly in important cases which closely affect the public interest. In English-speaking countries great weight is attached to public opinion, and so it is regarded as desirable to make use of its influence in the adjustment of disputes. A way of permitting the public to form an opinion had therefore to be found, and the means chosen was the publication of a report by the competent authority (conciliation institution,

¹ Section 22, subsection 3 (a).

² Cf. SITZLER: " Soziale und wirtschaftliche Bedeutung der staatlichen Schlichtung ", in *Neue Zeitschrift für Arbeitsrecht*, 1930, col. 15.

³ Pp. 20 et seq.

board of enquiry, etc.) on the causes of the dispute and the technical and economic possibilities of a particular settlement. Naturally the composition of such a report depended on an impartial investigation of the facts, which would ensure the enlightenment of the public by means of trustworthy information and avoid inaccuracies entailing injustice to one or other of the parties. This scheme permitted the maintenance of the principle of voluntary participation in conciliation and arbitration proceedings without preventing the exertion by public opinion of a certain — sometimes very efficient — pressure, to the general advantage.

The success of such investigation proceedings depended on and therefore justified the introduction of certain measures of compulsion for the elucidation of the facts ; and under the British Industrial Courts Act and the Canadian Industrial Disputes Investigation Act, such measures are permitted. In the British Act, the competent Minister may make rules regulating the procedure of any court of enquiry, including rules as to summoning of witnesses, administration of the oath and submission of documentary evidence¹. The Canadian Act clearly specifies the possibility of compulsion. A board of conciliation and investigation has, even without special investiture by the Minister, the powers of a court of record in civil cases — that is, “ it has all the powers of summoning before it and enforcing the attendance of witnesses, of administering oaths, and of requiring witnesses to give evidence on oath or on solemn affirmation . . . and to produce such books, papers or other documents or things as the board deems requisite to the full investigation of the matters into which it is enquiring. . . . ” It has also far-reaching rights with regard to investigation at the scene of the dispute. Non-compliance (e.g. failure of a witness to attend or obstruction of the board or its representatives during investigation) may be punished by a fine of up to \$100². It is important that, as under the Netherlands Act, either party may give evidence and can be compelled to do so³. It is only logical that in matters of great general interest the public shall at a later stage be given the opportunity of forming an opinion ; as has been pointed out, the question is no longer private but public, and the parties themselves must assist in its elucidation and satisfactory settlement. The Netherlands Act

¹ Section 4, subsections 4 and 5.

² Sections 30 to 32, 36, 38.

³ Section 33.

also provides for far-reaching means of compulsion in the investigation proceedings ; obstruction may be punished by a fine of up to 1,000 gulden and even imprisonment for as long as six months¹. Similar regulations are in force in India, where the proceedings are in many respects expressly made to resemble those of Indian criminal law². On the other hand, the corresponding provision of the above-mentioned American Federal Act makes no reference to compulsion³.

Investigation procedure appears to have rendered good service, particularly in Canada⁴, and will perhaps play a part in the future development of conciliation and arbitration⁵. In the intention of the British and Canadian Acts, the procedure is to a certain extent an end in itself, for it terminates when the report is submitted and published⁶. If the effect of the latter is that the parties come to an agreement under the pressure of public opinion, then the object has been fully attained ; if not, it need not be completely useless, for it may be used as a basis for any further conciliation or arbitration proceedings possible under the legislation of the country concerned. Once such a report has cleared the principal points under dispute of conflicting opinions and set them forth impartially, the new proceedings and any award given will often have particularly bright prospects of success and acceptance by the parties.

The fourth and last group comprises the systems which, because they allow compulsory imposition of the decisions of the mediation, arbitration and other bodies and the enforcement of such decisions by means of penalties or civil liabilities, are logically bound to provide corresponding compulsion for the elucidation of the facts. There is indeed a logical connection between the use of compulsion for these two purposes. As has often been pointed out, the responsibility for decisions in such systems is very grave, and there is a correspondingly grave need for awards to be based on an impartial and expert elucidation of the facts. This becomes all the more evident when it is remembered that if the State intervenes by authority in the settlement of

¹ Cf. sections 45 to 50, particularly 47 and 49, and section 57, subsection 3. Cf. also, p. 96.

² Cf. section 9, subsection 2 (c).

³ Section 10.

⁴ Cf. monograph on Canada.

⁵ Cf. for Germany SITZLER, *op. cit.*

⁶ Cf. section 5, subsections 2 and 3, of the British Act (on submission to Parliament) and section 29, subsection 1, of the Canadian Act.

labour disputes, it acts so to speak as a law-giver, and that the "laws" which fix binding conditions for the parties cannot be correctly drafted and executed unless the conditions to be regulated have been elucidated as fully and impartially as possible. The provisions in question in most of the Australian States, New Zealand and Italy arose indubitably out of considerations of this sort ¹.

Frequently the right of the competent institution to do all it considers advisable and necessary for the elucidation of the facts is expressly specified. The right to take evidence by compulsion, and to put witnesses on oath, far-reaching powers with regard to investigation at the scene of the dispute and the submission of books, accounts and other documents, are found repeatedly, with minor variations. It is comprehensible, for the reasons explained in the discussion on the second and third groups, that certain Acts permit the parties to be called and put on oath, and even that, as parties to the dispute, they have the right to be so heard. The usual penalty for non-compliance with the regulations on the elucidation of the facts is a fine up to £20 (or even £50) or imprisonment up to one month. The regulations in New South Wales, ², New Zealand ³, South Australia ⁴ and Western Australia ⁵ are particularly characteristic of the fourth group of systems ⁶, and an interesting provision of the Australian Commonwealth Act ⁷ also deserves mention; it empowers the court to "summon any person", whether connected or not with the industry in question, if it considers the attendance of such person desirable.

These are very far-reaching powers, and certain States have thought it necessary to ensure that the compulsion to give information on business and professional secrets, income, expenses, capital, etc., will not be abused. In proceedings before the New Zealand council of conciliation (though not before the Court of Arbitration), "no person shall be bound at any enquiry before the council to give evidence with regard to trade secrets, profits, losses, receipts, or outgoings of his business, or with respect to his financial position, or to produce the books kept by him in

¹ For the regulations in Germany, cf. above, p. 93. Germany was included in the first group.

² Cf. sections 33 to 35.

³ Cf. sections 46, 82 and 120.

⁴ Cf. section 40 (b).

⁵ Cf. sections 69, subsections XI to XIV, and 75.

⁶ The Rumanian Act also permits measures of compulsion (section 31).

⁷ Section 16 A (penalty, £500).

connection with his business " ¹. If any person nevertheless desires to give evidence on these subjects, he may do so, if the conciliation commissioner thinks fit, in the presence of the conciliation commissioner alone, sitting without assessors. In Western Australia " no evidence relating to any trade dispute, or to the profits or financial position of any witness or party, shall be disclosed except to the court, or published without the consent of the person entitled to the trade secret or non-disclosure " ². Infringement of this regulation may be punished with a fine of £100 or three months' imprisonment with or without hard labour. The Commonwealth ³ and South Australian ⁴ Acts contains similar provisions. In the proceedings before the *magistratura del lavoro* in Italy, " except with the consent of the parties, evidence of the financial position of the undertaking and of costs of production shall not be given otherwise than by means of documents produced by the parties or published, or by means of the cross-examination of the parties, an enquiry on the spot, or the evidence of expert citizens not belonging to the undertaking " ⁵.

The Queensland Act contains a provision according to which the Governor-in-Council may appoint an actuary or statistician to assist the Court of Arbitration in its elucidation of the facts by means of a statistical report on the economic and other circumstances of the case, or on occasion to provide the statistical data necessary for the elucidation of an existing dispute and, which is of particular importance, to give his opinion on the probable economic effects of an award for the community in general and for the industry concerned in particular ⁶.

That is the last important point in this chapter. Besides a thorough understanding of the situation of the industry concerned in the dispute, which is the object of elucidation in the actual proceedings, reliable information on the general industrial and social circumstances is of great importance. The matter is not usually dealt with by legislation, but there is no doubt that in practice it deserves the greatest consideration. In Germany, to give one instance only, the conciliators are summoned to regular discussions on the industrial and social situation at the Federal

¹ Section 46, subsections 11 and 12.

² Section 75 (6).

³ Section 85 (penalty, £500 or six months' imprisonment).

⁴ Section 41.

⁵ Section 83 of the Decree of 1 July 1926.

⁶ Section 9 of the Act of 23 December 1929.

Ministry of Labour. The statistical treatment of economic events is also making constant progress ; and it is clear that the facts thus obtained must be made available for all the bodies competent to deal with arbitration and conciliation, in order to facilitate the execution of their very responsible functions ¹.

¹ Cf. the following works on the elucidation of the facts : " Fact-Finding in Labour Disputes ", in *Proceedings of the Academy of Political Science*, Vol. XIII, No. 1 (New York, 1928) ; GROTE : " Beweisverfahren und Schlichtungswesen ", in *Neue Zeitschrift für Arbeitsrecht*, 1924, cols. 527 et seq. ; SCHICK : " Die Mittel zur Erforschung der Wahrheit im Verfahren vor der Schlichtungskammer ", in *Arbeitsrecht und Schlichtung*, 1929, cols. 41 et seq. ; KLEINDIENST : " Die Feststellung der wirtschaftlichen und sozialen Tatbestände im Schlichtungsverfahren ", in *Soziale Praxis*, 1928, cols. 984 et seq. ; NONNENMANN : *Die Mittel zur Erforschung von Tatsachen im Schlichtungswesen* (Berlin, 1931).

CHAPTER VI

THE CONCLUSION OF THE PROCEEDINGS

Only the case of disputes actually dealt with by the conciliation or arbitration authority will be discussed here. This implies the passing over of all cases in which the matter is not taken up — often for formal reasons — or in which it is dismissed, sometimes even before the proceedings have actually begun, either because the parties are not qualified to appear¹ or, as is possible in many States², because the matter lacks importance, or again because the original application does not appear to be justified.

Once the dispute has been dealt with on its merits there are two main possibilities for the conclusion of the proceedings. One is that an agreement may be reached while they are still in progress without a formal proposal for conciliation or an award having to be made; the other, that the institution may make such a proposal or award, in which case three further eventualities, emerge. The parties may submit the proposal or award in advance or decide the question of acceptance subsequently, or again, the award may be legally binding or can be made binding. The first solution, that of agreement of the parties during the proceedings without the intervention of a formal proposal for conciliation or award, is naturally the first object to be aimed at. The problems of practical importance to be discussed here arise in the second case, with its three possibilities — that is to say, when a formal proposal for conciliation or award is made.

First of all, the means of arriving at the proposal or award, the voting procedure and the cost of the proceedings deserve attention; next come the form, grounds and period of validity of the proposal or award; then, the legal nature and scope of the decisions will be examined, and the connected question of the methods of enforcing them; and finally, the question of the ordinary and extraordinary legal remedies against the decisions of conciliation and arbitration institutions will be briefly dealt with.

¹ Cf. above, pp. 44 et seq.

² Western Australia, section 69, I, Australian Commonwealth, section 38 (b), New Zealand, section 85, Canada, section 49, and cf. above, pp. 59 et seq.

MEANS OF ARRIVING AT PROPOSALS FOR CONCILIATION AND ARBITRATION AWARDS; VOTING, TIME LIMIT AND COST OF PROCEEDINGS

It is provided in the systems of several countries — e.g. Australia¹, Belgium², Canada³, Germany⁴, the Netherlands⁵ and Rumania⁶ — that the award shall be voted by simple or absolute majority of the members of the institution. When no explicit regulation is made — and this is no uncommon circumstance — it may be assumed that a simple majority is necessary and sufficient⁷ as is the case in Austria, Great Britain and Italy. On the other hand, many Acts, remarkably enough, do not make it necessary for all the members of the institution to vote in order to constitute a quorum. For instance, the British Minister of Labour can make rules “for enabling the Court or any division of the Court to act notwithstanding any vacancy in their number”⁸. Similar regulations govern the procedure of the New Zealand conciliation councils: “the power and functions of the council” — that is to say, particularly the right to make proposals for conciliation — “shall not be affected by any such vacancy⁹ in the number of assessors”¹⁰. In New Zealand¹¹ and Western Australia¹² the judge and at least one other member form a quorum for the holding of a sitting of the court and the issue of an award. In order to prevent the absence of an employers’ or workers’ assessor from reacting unjustly on the prospects of one side or the other, the Queensland Act provides that the assessor who is present may vote on behalf of the one who is not¹³. It is not clear on what considerations these regulations on the constitution of a quorum are based. It may have seemed advisable, in view of the circumstances in the countries concerned, to use this form of pressure, to induce

¹ Commonwealth Act, section 18 A, subsection 3.

² Section 14.

³ Industrial Disputes Investigation Act, section 46.

⁴ Section 21, para. 5, of the second Order for the Administration of the Conciliation Order of 29 December 1923.

⁵ Section 37 (arbitration courts).

⁶ Section 24, para. 1.

⁷ But in New Zealand, for instance, unanimity of the assessors of the conciliation council is necessary for a recommendation: section 54, subsection 2.

⁸ Section 3, subsection 1.

⁹ For instance, through death, resignation, inability to act due to sickness, etc.

¹⁰ Section 45, subsection 3.

¹¹ Section 83, subsections 1 and 2.

¹² Sections 76 and 77.

¹³ Section 27, subsection 7.

to induce all the members representing the employers and the workers to give their opinion nor to obtain an absolute majority, then the conciliator and the two impartial members shall give the award . . . by majority of votes" ¹. In this way an award can always be issued in any matter of real public importance, and if necessary the Federal Minister of Labour may declare the award binding ².

In countries whose conciliation and arbitration systems are definitely authoritative, such as Australia and New Zealand, regulations of this sort are not necessary, for the arbitration courts proceed on lines similar to those of courts of law, and unless there is some objection to the proceedings inherent in the case, a decision must naturally be arrived at ³. The regulations in certain countries on the voting when members of the courts are absent ⁴, which have already been mentioned, also ensure the issue of an award. In the proceedings before the Italian *magistratura del lavoro*, which is in every way similar to a court of law, difficulties of this sort cannot arise, since the State itself can bring an action through the Public Prosecutor ⁵. Western Australia has a very remarkable, and probably under certain circumstances very valuable, regulation on the subject. The Court first of all records its decision in the form of minutes, concerning which further discussions are held with the representatives of the parties. "As the outcome of such . . . discussion . . . it shall be open to the court in its absolute discretion to vary, or amend, the terms of such minutes before the same are actually issued as an award of the court." ⁶

A number of Acts provide that the minority of a conciliation, arbitration or investigation institution may express their opinion in a report. Such action is usually not permitted in compulsory

¹ Order on the settlement of industrial disputes of public importance issued by the Federal President on 9 January 1931 (*Reichsgesetzblatt*, I, p. 1). For details, cf. also the monograph on Germany and the articles by JOACHIM in *Reichsarbeitsblatt*, 1931, No. 3; FLATOW: *Neue Zeitschrift für Arbeitsrecht*, 1931, No. 2; NÖRPFEL: "Staatlicher Lohnabbau durch Unparteiische Schlichtung", in *Gewerkschaftszeitung*, 17 January 1931.

² It was originally provided that the period of validity of the Order should end on 31 July 1931, but the Order of 27 September 1931 has prolonged it (*Reichsgesetzblatt*, I, p. 513).

³ It is, nevertheless, interesting that in New Zealand (section 153) the court can refuse to issue an award if it is of opinion that for some reason this is the correct course.

⁴ Cf. above, p. 103.

⁵ Section 68, subsection 2, of the Decree of 1 July 1926.

⁶ Section 77; cf. also in this connection section 57 of the New Zealand Act and the remarks on the declaration that an award is binding under the German system, pp. 115 et seq.

systems. The reason for this is obvious in systems where the proceedings are based on those of a court of law (in Australia, New Zealand and Italy), and the decisions of the competent institutions therefore partake of the nature of legal judgments. Part of their authority would be gone if it was made public that only a certain number of the members of the institutions supported them. The same is true of systems whose proceedings are not based on those of a court of law, but whose proposals for conciliation or awards may, in certain circumstances, be declared binding or compulsorily enforced (Germany and Rumania). Regulations for the submission of minority proposals and reports are therefore to be found only in systems which are based on agreement and recognise no compulsory enforcement of awards; they apply most frequently to investigation proceedings¹. The regulations in Canada² (board of investigation), Great Britain³ (court of enquiry), India⁴ (board of conciliation, court of enquiry), the Netherlands⁵ (conciliation board), and Norway⁶ (conciliation board) may be given as examples.

The possible obstacles to the issue of a proposal or an award which have been discussed above are avoided in systems which have no conciliation and arbitration bodies, but only independent mediators who make proposals for conciliation or arbitration awards on their own responsibility. Denmark, Finland and Sweden are the principal countries with some form or other of the system of independent mediators. The mediator may make a proposal for settlement, or refrain from doing so, as he considers advisable⁷. Since the systems mentioned are founded on the principle of agreement, the necessity felt in authoritative systems for a proposal or award, on which compulsory enforcement may be based in case of failure to agree, does not arise. This is clearly to be seen in the case of the British conciliators, who simply act as self-effacing mediators and only very seldom come forward with a formal proposal for settlement. A provision in force in Finland⁸, the Netherlands⁹ and Sweden¹⁰, for instance, may also

¹ Cf. pp. 96 et seq. above.

² Section 27.

³ Section 5, subsection 2.

⁴ Section 11.

⁵ Section 17, subsection 5.

⁶ Section 36, subsection 2, para. 3.

⁷ Finland, section 12; Denmark, section 4, subsection 3.

⁸ Section 14, subsection 2.

⁹ Section 29: the individual mediator has an important position in this country, though not so important as in Denmark, Finland and Sweden.

¹⁰ Section 8, subsection 3.

be mentioned, according to which independent conciliators may not act as arbitrators. They are thus not permitted to make awards, which being binding¹ might prejudice one of the parties against them, and so lead to a loss of full confidence in their impartiality.

Many Acts fix the period within which the competent body must make the proposal for conciliation, award or other decision or judgment. This is, for instance, the case in Italy², New Zealand³, and Western Australia⁴. Such provisions are comprehensible in countries which recognise authoritative regulation of labour disputes, for the State has a close interest in settlements which it must perhaps put into execution by means of compulsion, and it naturally tends to attach importance to rapid completion of that process. The Norwegian Act⁵ also lays down a certain maximum period for the conclusion of mediation proceedings. These regulations became necessary because the parties may be forbidden to cease work during the proceedings, and such a prohibition, in a system otherwise based on free agreement between the parties, can logically be imposed for a limited time only. The Chinese⁶ regulations also lay down maximum periods for the issue of proposals for conciliation and arbitration awards.

The proceedings are usually concluded when the proposal or award has been made. It is therefore not out of place to add a few words here about the costs of the proceedings. In general it must be emphasised that the same principle as was mentioned in the discussion on formality in procedure⁷ applies here — namely, that if the State decides to play a mediating or decisive role, through its conciliation and arbitration machinery, in the settlement of labour conditions, it should not for practical purposes permit high costs to stand in the way of their utilisation by disputing parties. There is thus, so far as is known, no case of a charge being made for the use of official conciliation and arbitration institutions or investigation boards. In most systems this may

¹ It must again be emphasised that almost all countries except Germany make a sharp distinction between conciliation (mediation) and arbitration. If the awards of arbitration institutions are not binding by law (as in authoritative systems), they are usually rendered so by the previous explicit or implicit acceptance of the parties.

² Decree of 1 July 1926, sections 80, 81 and 84.

³ Section 87 (one month).

⁴ Section 79 (one month, longer if necessary).

⁵ Section 36, subsection 1 (fourteen days after issue of the first prohibition of a stoppage of work).

⁶ Sections 26, 30 (*Legislative Series*, 1930, China 1).

⁷ Cf. above p. 80.

be assumed as tacitly intended ; in others it is expressly specified (Germany ¹, Norway ² and Rumania ³). On the other hand, almost all Acts provide that the costs and expenses of State conciliation, arbitration and investigation machinery shall be paid out of public funds (Austria ⁴, Belgium ⁵, Canada ⁶, Finland ⁷, Germany ⁸, Great Britain ⁹ and the Netherlands ¹⁰). Each party usually bears its own costs, this being specified, for instance, in the Finnish Act ; but it is remarkable that the Australian Commonwealth Act ¹¹ (like those of New Zealand ¹² and South Australia ¹³) provides that " the court may order any party . . . to pay any other party such costs and expenses, including expenses of witnesses, as is thought fit, but so that no costs shall be allowed for the services of any counsel, solicitor, or agent ".

FORM, GROUNDS AND PERIOD OF VALIDITY OF CONCILIATION AND ARBITRATION DECISIONS

It has already been pointed out that formalities are usually less important in conciliation and arbitration ¹⁴ than in ordinary judicial proceedings, but that more weight is attached to them ; indeed, they become more and more indispensable the more the proceedings take on an authoritative character. This observation may also be applied to the form given to the decisions issued as a result of these proceedings.

First of all it is a general rule that the decisions must be written ; this custom is usually respected in the case of formal proposals for conciliation also in systems based on the principle of agreement, though it is not in every case specified in legislation. It is also often the custom or regulation that the decision shall be signed by the independent conciliator, arbitrator, magistrate or chairman of the conciliation or arbitration institution, and

¹ Section 19, para. 1, of the second Order for the Administration of the Conciliation Order.

² Section 45, 1.

³ Section 39.

⁴ Section 22, 3.

⁵ Section 18.

⁶ Sections 54 and 69.

⁷ Sections 17 and 18.

⁸ Section 9 of the Conciliation Order.

⁹ Industrial Courts Act, section 7.

¹⁰ Sections 52-54.

¹¹ Section 17 A : cf. also section 38 (i).

¹² Section 86 : cf. also section 100.

¹³ Section 21, subsection 1 (f).

¹⁴ Cf. above, pp. 56 and 80 et seq.

often by all the assessors ; provisions to this effect are to be found in some of the systems based on the principle of conciliation (Finland ¹, Netherlands ², and in China ³). They are particularly necessary in systems which provide for the issue of a report or considered opinion after the conciliation proceedings, when these end without an agreement, or at the conclusion of the investigation stage ⁴. The Belgian ⁵, Canadian ⁶, Indian ⁷, Netherlands ⁸ and Norwegian ⁹ Acts may be mentioned as examples.

In countries where awards are binding on the parties, as in the Australian States, New Zealand and Italy, or can be declared so, as in Germany ¹⁰, it is often necessary that the award should be in writing and moreover that certain specific details should be given — the persons and objects to which it applies, its period of validity, etc. — by reason of the fact that serious civil or criminal consequences may be attached to these awards. Many Acts emphasise the duty of issuing as clear and plain an award as possible and of avoiding unnecessary technicalities. A maximum period of validity is often added (chiefly in Australia and New Zealand), and this lies as a rule between one and five years. It should be noticed that, according to these regulations, the award remains valid after the expiration of this period until a new award has been issued or an industrial agreement concluded. This last regulation is comprehensible in countries with authoritative systems, for a break in the usual State regulation of labour conditions on collective lines would certainly have serious consequences and resemble a sudden lapse in legislation elsewhere — for in countries like Australia, New Zealand and Italy the awards very closely resemble legislation ¹¹. A section in the New South Wales Act is worthy of notice, for it provides that “ a

¹ Section 12.

² Section 17, subsection 2.

³ Sections 27 and 31.

⁴ See above, pp. 96 et seq.

⁵ Section 11 G.

⁶ Sections 25, 27.

⁷ Section 50.

⁸ Sections 7, subsection 2, and 11.

⁹ Section 36, subsection 2.

¹⁰ See below, p. 115, and the monograph on Germany.

¹¹ Cf. in this connection Australian Commonwealth Act, sections 28 and 29; Queensland Act, section 21; New South Wales Act, section 25; Western Australia Act, sections 78 and 80-83; South Australia Act, section 47, subsections 1 (a), (c) and 2; New Zealand Act, sections 88 and 89; Italy, section 16, subsection 4, of the Decree of 3 April 1926 (where not otherwise mentioned the formalities of civil procedure govern decisions); Rumanian Act, sections 25, 26; and section 21, para. 6, of the second Order for the Administration of the German Conciliation Order.

union of employees may render an award which has been in operation for a period of at least twelve months no longer binding on its members by the vote of a majority of its members at a secret ballot . . . in which not less than two-thirds of the members of such union take part ”¹.

It is seldom specified that the grounds for the decision must be given, but this is logical in cases where the submission of a report giving a considered opinion on the dispute is required — especially in investigation procedure proper, e.g. in Canada (Industrial Disputes Investigation Act)², Great Britain (Industrial Courts Act, courts of enquiry)³, India (courts of enquiry)⁴, and the Netherlands (investigation procedure)⁵. A statement of the grounds is explicitly required, for instance, in arbitration procedure in the Netherlands⁶, on the failure of conciliation in Belgium⁷, and in proceedings before the *magistratura del lavoro* in Italy⁸, though in the last case a “brief statement” is sufficient. In Australia, too, reasons are usually given⁹.

At the first glance it may seem extraordinary that the obligation to give the reasons on which awards are based is not universal, especially in countries where they are binding or may be declared so (Germany), and where non-compliance often has consequences of the greatest importance for the parties and the general public. The real reason is probably that it is difficult, if not at times impossible, to explain a decision in a dispute arising out of a struggle for power¹⁰ otherwise than on general grounds of equity, an explanation which is not always convincing and may often barely veil the fact that the award merely reflects the superior strength of one of the parties. This is another indication of the fundamental difference between such decisions and those given in disputes on rights, which are in the main merely the application of existing law to individual cases and can thus be explained on the basis of the legal situation of the parties. In disputes on interests a principal, though not necessarily the sole, reason given for the decision must logically be the relative strength of the

¹ Section 45 (b).

² Section 25.

³ Sections 4 and 5.

⁴ Sections 4 and 5.

⁵ Sections 45-50.

⁶ Section 40.

⁷ Section 11 G.

⁸ Section 85, subsection 4, of the Decree of 1 June 1926.

⁹ Cf. article by SELLS: “Regulation of Wages in Australia”, in *International Labour Review*, Vol. X, No. 6, Dec. 1924.

¹⁰ Cf. above, p. 6.

parties. But to give this as a ground for the decision seems inexpedient, chiefly for tactical reasons, because, especially if it is made public, it would tend to weaken the will of the parties to carry out the decision, a factor which is important in all cases, though to a smaller degree in compulsory systems than in those based on voluntary agreement ¹.

Provisions concerning the manner of announcing proposals for conciliation, arbitration awards, reports or considered opinions and of communicating them to the parties are of small importance from an international standpoint. They are contained partly in advisory, partly in compulsory, instructions, the latter having to be carried out in order that the decisions to which they refer may be valid. The question of the publication of decisions is more important and is regulated in a great variety of ways. In general, the more thoroughly a system treats labour disputes as matters of public importance, the more it permits or prescribes the publication of awards. This is the position in systems with investigation procedure or with authoritative regulation of labour conditions, and in fact needs no other explanation than their nature. The awards of the Australian and New Zealand arbitration courts and the Italian *magistratura del lavoro* may be instanced, for in these countries the utility or necessity of publication is a direct consequence of the character of the institutions and of the fact that the awards they issue are in the nature of laws. The reason for this is that they are by no means always binding only on the parties to the individual dispute, but are often extended by law to cover the whole industry or may be applied by means of special measures to other persons than those immediately concerned in the dispute (common rule ; in German, *Allgemeinverbindlicherklärung* ²). In the case of investigation procedure, the publication of the report or expert opinion should in itself imply the attainment of the main object of the proceedings, that is the pressure of a well-informed public opinion on the parties with a view to agreement. Canada (Industrial Disputes Investigation Act ³) and Great Britain (Industrial Courts Act, court of enquiry ⁴) provide the best examples. On the other hand, in systems based on the principle of conciliation — for instance,

¹ But cf. the contrary opinion given by Lord AMULREE in his book *Industrial Arbitration in Great Britain*, pp. 183 et seq.

² See below, pp. 116 and 121 et seq.

³ Section 29, subsection 1.

⁴ Section 5, subsection 2.

in Denmark¹, Finland² and the Netherlands³ (investigation proceedings) — publication sometimes depends on the agreement of the parties or of the conciliator, and is sometimes only permitted after special discussion with the parties. This too is a natural and valuable regulation, for in these systems it is of the greatest importance not to weaken the parties' will to agreement, and this might certainly occur as a result of the premature publication of decisions.

NATURE AND SCOPE OF CONCILIATION AND ARBITRATION DECISIONS; METHODS OF ENFORCING CONCILIATION PROPOSALS AND ARBITRATION AWARDS

The legal nature of the decisions arrived at in conciliation and arbitration proceedings is clearly seen in their legal consequences. These are first horizontal or quantitative — that is to say, they extend over a certain number of persons concerned in the dispute — and secondly vertical or qualitative — that is, they entail, for these persons, various kinds of more or less binding obligations and limitations in fact or in law. It may be seen from a glance at a number of the most important regulations that there is almost everywhere a certain correlation between these two types of legal consequences; as the qualitative consequences (i.e. limitations on the parties) increase or decrease, so, too, do the quantitative consequences (the number of persons affected) and *vice versa*. In systems founded on the principle of conciliation, in which the State does not intervene authoritatively, the scope of the decisions of conciliation and arbitration institutions — in so far as the expression “decisions” in the legal sense can be used in such cases — is limited to the actual parties to the dispute. The parties' acceptance of a conciliation proposal, which in these systems is never binding, or their agreement in advance to accept an arbitration award, which only thus becomes binding, entails obligations in fact or in law for them alone.

On the other hand, in systems under which the authoritative regulation of the relations between the parties through the intervention of the State is permitted or customary and the decisions arrived at in the proceedings thus are or can be made binding on the parties, the scope of the decisions is also correspondingly

¹ Section 4, para. 3.

² Section 15, para. 2.

³ Section 50.

widened quantitatively ; either during the proceedings or by a subsequently separate decision it is or may be extended to comprise persons not actually parties to the dispute ¹.

The first group of systems comprises first of all certain English-speaking countries, with the exception of Australia, New Zealand and South Africa — that is to say, Canada, Great Britain and, as far as can be established, the United States of America ; while India may also be included, for her Act on the subject came into existence under British influence. According to the legislation of these countries, acceptance of the proposal or award of a conciliation or arbitration institution creates no legal obligation, but only the moral obligation of a "gentleman's agreement". But it is otherwise in the other systems belonging to this group — those of Austria, Belgium, Denmark, Finland, the Netherlands, Norway and Sweden. In most of these countries collective labour agreements are at least partly regulated by the law, which usually has the effect that, when a conciliation proposal or arbitration award is accepted, such an agreement with its legal consequences comes into being. In the Norwegian Act ², for instance, this is expressly specified. In so far as there is no legal regulation of collective agreements in these countries, the acceptance of proposals and awards entails at least certain obligations in accordance with the general law of contract.

The legal nature of the "decisions" of conciliation and arbitration institutions is indicated by the fact that under the legislation of the States in this first group, they are administrative acts of a public authority, whose binding effects in fact or in law depend on the will of the parties. If the latter do not previously or subsequently accept the decision, then it remains only a suggestion, a non-binding proposal by the authority to the parties to regulate their conditions on the lines recommended. The obligation incurred by acceptance is in principle of a civil nature only, as appears plainly from the Swedish Act of 22 June 1928 ³ on collective agreements, though the Norwegian Act provides for some sort of penal sanction too. It prohibits "recourse . . . to a strike or lock-out in order to settle a dispute between a trade union and an employer or an employers' association respecting

¹ It is true that in a few cases (cf. below p. 122) the scope of the decision can also be limited during the proceedings irrespective of the wishes of the parties ; but then there is at least an official definition of quantitative scope.

² Section 37.

³ Section 8 (*Legislative Series*, 1928, Swe. 2).

the validity, interpretation or existence of a collective agreement" ¹. This direct guarantee of the enforcement of collective agreements is at the same time an indirect guarantee of that of conciliation proposals and arbitration awards, which are made legally equivalent to a collective agreement if accepted by the parties. This exception may perhaps be explained by the fact that until 1 August 1929 Norway possessed a compulsory arbitration system similar to, though not so highly developed as, those of Australia and New Zealand, and so naturally could not avoid penal sanctions of the type mentioned. The penalties provided for in the Canadian² and Indian³ Acts, which lay down minimum periods of notice before conditions of employment may be altered, were not conceived as guarantees of the observance of accepted proposals and awards, and therefore do not belong here ⁴.

The German regulations illustrate the transition stage between the systems of the first group and those of the second. There, the award of a conciliation institution is a proposal not binding on the parties, who can accept or reject it as they see fit ⁵. If they accept it, a collective agreement comes into existence between them, with rights and duties on either side, but these have only civil validity and affect no one but the actual parties. Rejection entails no obligation whatever. To this extent the German system may be included in the first group, in which the quantitative and qualitative scope of the decisions issued is narrower, but further regulations make it seem to belong also to the second group, which comprises systems with decisions of wider scope in both respects. The following provision makes this classification inevitable: "if the award is not accepted by both parties, it may be declared binding if the settlement contained therein appears just and reasonable, with due consideration for the interests of both parties, and if its application is desirable for economic and social reasons" ⁶.

¹ Section 6, subsection 1.

² Sections 57, 58 and 59.

³ Section 15.

⁴ Nor, of course, do sections 6 of the Canadian Act, 16 and 17 of the Indian Act, and 6, subsection 3, of the Norwegian Act.

⁵ The subsidiary points raised in sections 75 and 80 of the German Works Councils Act are not taken into consideration here.

⁶ Section 6, subsection 1, of the Conciliation Order. Cf. also the Emergency Decree of 30 September 1931, which empowers the Minister of Labour to modify in declaring binding under certain conditions an arbitration award concerning its duration without consent of the parties. For details, cf. monograph on Germany.

The possibility of declaring awards binding is a break with the principle of voluntary agreement as typified in the regulations of the first group. By such a declaration a collective agreement between the parties is compulsorily created by State intervention, a qualitative legal consequence which, in systems of the first group, could only be the result of the voluntary determination of the parties. It must be added that such a compulsory collective agreement binds only the parties to the proceedings and thus has the same limited quantitative scope as proposals or awards accepted by the parties. This scope may, however, in certain circumstances be extended by a declaration that the award is generally binding, given by the Federal Minister of Labour, on the application of at least one of the parties to the collective agreement, which may also be a "compulsory collective agreement", as described above. The provision in question runs as follows¹:

The Federal Minister of Labour may declare collective contracts generally binding if they have acquired predominant importance in the fixing of conditions of employment for the industry in question in the area covered by the collective contract. Such collective contracts shall then be binding within the meaning of section 1, within the geographical area to which they apply, in respect of contracts of employment which are covered by the collective contract owing to the nature of the employment, even if neither the employer nor the employee, or only one of them, was concerned in the collective contract².

In brief, the following appears to be the legal nature of conciliation proposals and arbitration awards in Germany. First of all they are, like those of the first group, administrative acts of a public authority, and their binding effect depends in principle on the voluntary acceptance of the parties directly concerned. By means of a further act on the part of the authorities, the award may be declared binding and so transformed into a collective agreement, which is valid in civil law. Finally a third act may declare this compulsory collective agreement generally binding and so extend its quantitative scope³.

¹ Sections 2 and 3 of the Act of 28 February 1928 to amend the Collective Contracts Order (*Legislative Series*, 1928, Ger. 2).

² It is immaterial here that the declaration that a decision is binding covers only the so-called "normative clauses" of the agreement. The Austrian Act also recognises this form of action, which it calls a "determination", but not the compulsory collective agreement, so that it does not belong to this group (cf. Austrian Act, sections 16 et seq.)

³ There is great divergence of opinion in Germany on the detailed legal nature of these declarations, but the matter cannot be further discussed here.

It may be concluded from the above that the legal consequences of decisions of the German institutions, though influenced by public law, belong in essence to the domain of private law.

In the systems belonging to the second group, private law is definitely left behind and public law takes its place. The systems of the Australian States, New Zealand ¹ and Italy belong to this group, and those of South Africa and Rumania may perhaps also be included in certain respects.

This statement is justified by an analysis of the qualitative consequences of decisions. According to the Australian and New Zealand Acts the awards of the arbitration courts, the final courts of appeal in conciliation and arbitration, are binding on the parties and their enforcement is consistently guaranteed by penal sanctions.

The regulations contained in the Australian Commonwealth Act provide the best illustration of this position ². The enforcement of an award is here guaranteed in the most multifarious manner imaginable. In order to facilitate a survey of the question, a distinction will be drawn between direct and indirect guarantees of enforcement, though this implies no pretension to exclude other systems of classification.

Among guarantees of the direct type must first of all be mentioned the power of the court "to fix maximum penalties for any breach or non-observance of any term of any order or award, not exceeding £1,000 in the case of an organisation or an employer, not being a member of an organisation bound by the order or award, or £10 in the case of any individual member of an organisation" ³. Next, the Court may impose penalties in particular cases which must not exceed the general maximum ⁴. Thirdly, "the court, the high court or a justice thereof or a county, district or local court, may, on the application of any party to an award, make an order in the nature of a mandamus or injunction to compel compliance with the award or to restrain its breach or to enjoin any organisation or person from committing or continuing any contravention of this Act or of the award under pain of fine or imprisonment. . . ." Contravention of this injunction may be punished with a fine of £100 or three

¹ For further details, cf. *Freedom of Association*, Vol. V, pp. 276 et seq.

² Cf. the article by FOENANDER in the *International Labour Review*, Vol. XIX. No. 2, Feb. 1929.

³ Section 38 (c).

⁴ Section 38 (d).

months' imprisonment¹. In this connection a further provision may be mentioned, prescribing a fine of £20 for any person who "shall willingly make default in compliance with any order or award"². Besides the actual penalty (fine or imprisonment), a person guilty of this offence is liable to further legal disabilities, some or all of which the court may impose as it thinks fit:

He shall not be entitled to any rights, privileges, benefits or advantages under this Act, and this Act shall, so far as any such rights, privileges, benefits or advantages are concerned, cease to apply to him:

He shall cease to be a member or officer of any organisation, or of any association which is, or is part of, any organisation, and shall not be qualified to become a member or officer of any organisation or of any such association:

He shall lose all existing or accruing rights to any payment out of the funds of any organisation, or of any association which is, or is part of, any organisation, and the receipt by him of any such payment, or the making of any such payment to him by any person or organisation, or by any such association, shall be an offence under this Act³.

Another valuable direct guarantee of the enforcement of an award is the security (maximum £500) which a judge may demand of any organisation concerned in a dispute, and which may be given in the form of a bond with a surety or in cash; if the security is not given, the organisation concerned may lose the benefits of any award which would otherwise have applied to it⁴.

Measures for the indirect guarantee of the enforcement of awards are also well developed. First of all there is a general "prohibition of lock-outs and strikes in relation to industrial disputes", contravention of which may be punished with a fine of £1,000 in the case of an organisation or employer and of £500 in that of any other person, though proceedings in respect of such contravention cannot be instituted without the leave of the Chief Judge. If it is maintained that the lock-out or strike has arisen "for good cause independent of the industrial dispute", the onus of proof, characteristically enough, lies on the defendant⁵. It should be noted that this regulation may be very widely applied. for not only lock-outs and strikes as such, but also anything "in the nature of a lock-out or strike" may be punished; the Act provides that "any organisation of employers or employees which, for the purpose of enforcing compliance with the demands of any employers or employees, orders, encourages, advises or

¹ Section 48.

² Section 49.

³ Section 50; cf. also sections 70, 70 A and 70 B.

⁴ Section 33.

⁵ Section 6.

incites its members to refuse to offer or accept employment, shall be deemed to be guilty of doing something in the nature of a lock-out or strike as the case may be ”.

For the purposes of this section an organisation shall be deemed to have ordered, encouraged, advised or incited its members to refuse to offer or accept employment if : (a) the committee of management of the organisation or of a branch of the organisation ; (b) a member of the committee of management of the organisation or of the committee of management of a branch of the organisation ; (c) any body of persons controlling the organisation or a branch of the organisation ; or (d) an officer of the organisation or of a branch of the organisation, has ordered, encouraged, advised or incited members of the organisation to refuse to offer or accept employment ¹.

The maximum penalty which may be imposed on an organisation for this offence is £100, if “ the court dealing with the matter is satisfied that . . . the organisation or branch has *bona fide* removed from any office or position held by them and, where they are members of the organisation, has expelled from the organisation the persons by reason of whose acts the organisation has been found guilty of the offence. . . ” ² A further regulation lays down that persons who have been so dismissed by an organisation shall not be re-appointed or re-accepted as members of it within twelve months, and provides for a fine of £1,000 — that is to say, the same as for an actual lock-out or strike ³.

Besides the general prohibition of lock-outs and strikes, there is a special one for persons and organisations bound by an award ; it provides for the same fines for contravention as the general prohibition, but the institution of proceedings is in this case not dependent upon the leave of the Chief Judge ⁴. It is also provided that the court may “ suspend or cancel, for such period as it thinks fit, all or any of the terms of any order or award in force so far as the order or award applies to, or is in favour of, the organisation or its members ” ⁵. A further indirect measure of compulsion which is apparently very effective in certain circumstances is the provision that in specified conditions a strike or lock-out may be permitted as counterstroke to an illegal lock-out or strike by the other party ⁶.

The enforcement of awards is also indirectly guaranteed by a regulation intended to protect a worker from dismissal by his

¹ Section 8.

² Section 8, subsection 3.

³ Section 8, subsection 4.

⁴ Section 6 A. Cf. also the possibilities of exculpation (section 6 B).

⁵ Section 38 D.

⁶ Section 7.

employer because he "is entitled to the benefit of an industrial agreement or an award"¹. Infringement of this regulation is punishable with a fine of £50. In the same way a worker "shall not cease work in the service of his employer by reason of the circumstance that the employer . . . is entitled to the benefit of an industrial agreement or an award"². Here too the onus of proof that the reasons for his action were within the law lies upon the defendant³. An important penal sanction for the enforcement of awards is contained in provisions inserted in the Act when last amended in 1928, which are intended to protect from threats, boycott and any sort of intimidation, persons offering or accepting employment or working in accordance with the terms of the award, and also to protect members of an organisation against disabilities with which the latter may, for the above reasons, threaten them. Contravention is punishable with a fine of £20, £50 or £500⁴, as the case may be. Even the moral authority of the award may not be publicly attacked, for "any person who prints or publishes any report or other matter containing any order, encouragement, advice or incitement to commit any breach or non-observance of this Act or of any order or award. . . shall be guilty of an offence. Penalty : £100."⁵ An award is here, as elsewhere, expressly placed on a level with the law.

These measures are supplemented by special provisions which shorten and simplify the procedure for the collection of fines and the forfeiting of sureties that have been given, and determine the liability of organisations and of their members in the case of execution of process against their property to enforce the award⁶. When, in addition, it is realised that special inspectors may be appointed "for the purpose of securing the observance of this Act and of awards and orders made under this Act"⁷, and that the court may appoint a special board of reference to deal with individual cases, the truth of the contention made at the beginning of this section becomes clear — the domain of private law has been abandoned ; the award has the full force of public law.

It would take too long to collect further evidence from the

¹ Section 9, subsection 1 (b).

² Section 9, subsection 2 (b).

³ Section 9, subsection 4.

⁴ Sections 86 A and 86 B.

⁵ Section 86 D.

⁶ Cf. sections 44, 46 and 47.

⁷ Section 50 A, particularly subsections 1, 4, 5 and 6.

New Zealand Act and those of the other Australian States. Though there may be differences in detail, and though many may lack the completeness of the Commonwealth Act, the tendency is the same in every case, as an examination of the sections mentioned below will prove ¹.

That awards in these countries partake of the nature of public law has been proved from their qualitative effects; it is just as easy to complete the evidence by a consideration of their quantitative effects. As was said in the opening remarks on the legal nature of conciliation and arbitration decisions, there is a certain correlation between the qualitative and the quantitative effects, each increasing and decreasing with the other. This is confirmed by the legislation of Australia and New Zealand. Since, as has been seen, the qualitative effects in these countries are as far reaching as may be (i.e. the award is binding on pain of penalties), the quantitative effects (i.e. the scope of the award as to person and area) must also be particularly wide. In the German regulations the declaration that an award is generally binding can take place only at the conclusion of the proceedings and at the request of the persons concerned ²; but in Australia and New Zealand the courts may extend (or limit) the group of persons party to the proceedings as they think fit ³. The Australian Commonwealth Act ⁴ says: "The court shall. . . have power. . . to direct parties to be joined or struck out". Similar regulations are in force in South Australia ⁵, New Zealand ⁶, etc. In addition, by the declaration that it is generally binding (the "common rule") the award can be extended, at or after the conclusion of the proceedings, to persons other than the actual parties ⁷. There are also provisions of this sort in the Commonwealth ⁸, South Australian ⁹, Western Australian ¹⁰, Queensland ¹¹ and New

¹ Cf. in particular Western Australian Act, sections 96 and 97, particularly subsections (5), 98, 100, 129, subsections (1) to (4), 131 to 134; New South Wales Act, sections 44 to 48, 48 B to 48 E, 49, 50, 52, 55, 61, 67; South Australian Act, sections 99, 100, 102-109, 110, 111, 115, 120, 121, 123, 127, 128 to 132; Queensland Act, sections 88 to 90, 93, 96 to 100, 111; New Zealand Act, sections 8, 9, 101, subsection (6), 102 A, 109, 111, 123 to 125, 127, 129, 134, 139.

² Certainly the possibility of official institution of proceedings may to a certain extent determine the persons affected, but this is an exception.

³ Cf. footnote 1, p. 114.

⁴ Section 38 (*p*).

⁵ Section 21, subsection 1 (*p*).

⁶ Sections 92, subsections 1 (*b*) and (3), 94 and 113, subsection 1 (*a*).

⁷ Cf. above, p. 116 (remarks on the declaration of general validity in Germany).

⁸ Section 38 (*f*) and (*g*).

⁹ Section 21, subsection 1 (*g*) and (*h*).

¹⁰ Section 82; cf. also section 83.

¹¹ Section 61, subsection (1).

Zealand¹ Acts ; the Commonwealth Act is particularly characteristic of the lengths to which such extension may go :

The award of the court shall be binding on : (a) all parties to the industrial dispute who appear or are represented before the court ; (b) all parties who have been summoned or notified to appear as parties to the dispute, or required to answer the claim, whether they have appeared or answered or not, and unless the court is of opinion that they were improperly made parties ; (ba) in the case of employers, any successor, or any assignee or transmittee of the business of a party to the dispute or of a party bound by the award, including any corporation which has acquired or taken over the business of such a party ; (c) all organisations and persons on whom the award is at any time declared by the court to be binding as a common rule ; and (d) all members of organisations bound by the award².

Both the qualitative and quantitative effects of awards therefore show that in these systems they have the character of public law. A remarkable disposition of the Australian Commonwealth Act draws the far-reaching conclusion that in certain cases an award takes precedence over an Act. It says :

When a State law or an award, order, or determination of a State industrial authority is inconsistent with, or deals with any matter dealt with in an award or order lawfully made by the court, the latter shall prevail, and the former shall, to the extent of the inconsistency, or in relation to the matter dealt with, be invalid³.

The New Zealand Act contains a similar provision⁴.

The legal nature of decisions under the Italian conciliation and arbitration system is plainly to be seen from the force given to the awards of the *magistratura del lavoro*. The conciliation proceedings regularly undertaken by the trade organisations, and on occasion by the Ministry of Corporations, before the *magistratura* takes up a case, do not need special treatment here ; they are not regulated by legislation, and the proposals made, as in systems based on the principle of agreement, are not enforceable⁵.

On the other hand, the Italian Decree of 1 July 1926 provides that an award of the *magistratura del lavoro*, " with respect to collective relations considered in connection with employment

¹ Section 89, subsections 3-7, 90, 91, subsection 2 ; cf. also sections 93 and 94.

² Section 29 ; cf. the corresponding provisions of the Acts of South Australia (section 51) and Queensland (section 22).

³ Section 30.

⁴ Section 151, subsection 1. Cf. also section 89, subsection 8 (retroactive effects), and South Australian Act, section 21, subsection 1 (t).

⁵ This is the legal position, but the extraordinary discipline of the trade organisations makes these proposals practically binding.

and fixing new conditions of employment, shall have the force of a collective contract”¹ and is binding on the parties. Execution is enforceable both in civil and in criminal law; the significance of the section of the Act of 3 April 1926 which bears on this question also justifies quotation:

Without prejudice to the application of the provisions of the ordinary law respecting civil liability for failure to comply with a decision or respecting the execution of legal decisions, employers or workers who refuse to carry out the decision of tribunals for labour matters shall be liable to detention for not less than one month nor more than one year and to a fine of not less than 100 lire nor more than 5,000 lire.

Responsible officials of legally recognised associations who refuse to carry out the decision of a tribunal for labour matters shall be liable to detention for not less than six months nor more than two years and to a fine of not less than 200 lire nor more than 10,000 lire, in addition to removal from office.

If, in addition to failing to carry out the decision of the tribunal for labour matters, the guilty persons have also taken part in a strike or lock-out, the provisions of the Penal Code respecting concurrent offences and penalties shall apply².

Besides the direct protection provided by legislation, the general prohibition of strikes and lock-outs serves the same purpose indirectly, for its contravention entails very considerable penalties — fines from 100 to 100,000 lire, imprisonment up to three, or even six, years, temporary or permanent loss of competence for official posts, etc. — depending on the gravity of the infringement and on the position of the guilty party (whether employer or worker). Contraventions in public utility undertakings and public services are treated with particular severity.

Besides these qualitative effects, the awards of the *magistratura del lavoro* have the widest possible quantitative effects. They extend beyond the persons directly concerned; no special procedure is necessary, for the Act lays down that collective agreements concluded between legally recognised associations of employers and workers are valid for all employers and workers, whether they are members of such associations or not. And since a decision of the *magistratura del lavoro* has the “force of a collective contract”, this compulsory agreement binds not only the actual parties concerned, but also all the persons engaged in the occupation in question within the area covered by the

¹ Section 87, para. 1.

² Section 22. The penal provisions of this Act were recently incorporated in the new Italian Penal Code.

decision¹. The legal consequences are thus similar to those of the German declaration that an award is generally binding² and the corresponding measures of the arbitration courts in Australia and New Zealand³.

It may be concluded from the above that the awards of the *magistratura del lavoro* undoubtedly partake of the nature of public law.

The same may be said of the South African and Rumanian systems, though it must be remarked that binding arbitration awards are obligatory only in the case of certain public utility undertakings specified in the Acts, and are otherwise dependent on the consent of the parties to submit to them. In both these countries also, the qualitative and quantitative effects are wide and secured by penal guarantees ; for details, reference may be made to the respective Acts⁴.

² An important question, of a practical rather than a legal nature, may be briefly referred to in concluding this section — that of the feasibility and actual use of sanctions, especially those of a penal nature, for the enforcement of awards. Only Australia and New Zealand have long experience on this subject, and such reliable data as are available have been discussed in the monographs on those countries, to which reference may be made⁵. In general, it may be assumed that penal sanctions are not in practice feasible if large numbers of persons are determined not to respect the law ; this has occurred several times in Australia⁶. The efficiency of this, like any other, legislation depends in the last resort on whether public opinion desires and aids its enforcement, and whether it is in keeping with the economic and legal systems of the State in question⁷. In countries where the decisions of conciliation and arbitration institutions are guaranteed by civil law only, the matter is much simpler ; and in Germany, in the very large majority of cases, compulsory agreements arising out of declarations that an award is generally binding have in fact been executed. But here too there are undoubtedly limits to the possibilities of

¹ Cf. section 10, para. 1, of the Act of 3 April 1926.

² Cf. above, p. 117.

³ Cf. above, pp. 121 et seq.

⁴ South Africa, sections 7, 9, 11, 12 and 22 ; Rumania, sections 16, 22 and 32.

⁵ See monographs on Australia and on New Zealand.

⁶ Cf. article in *International Labour Review*, Vol. XIV, Nos 5-6, Vol. XV, No. 1 : " Conciliation and Arbitration in Labour Disputes " (Vol. XIV, No. 6, p. 857, " Enforcement ").

⁷ Cf. the general discussion of this point in the final chapter.

enforcement, for if such a declaration were too crassly at variance with the comparative strength of the parties or with economic and social reason, the injured party would probably take the risk of breaking the agreement, even though imposed by public authority.

LEGAL REMEDIES AGAINST CONCILIATION AND ARBITRATION DECISIONS ; THE QUESTION OF REVISION

The execution of conciliation and arbitration decisions and measures for enforcing them have been sufficiently dealt with in the course of the discussion on their legal nature. It remains only to deal with legal remedies, ordinary and extraordinary. Only remedies against decisions of the institutions on the merits of the case will be dealt with¹ ; the very common rights of objection against standing orders, rulings², etc., will not be taken into account, for they have little international importance.

One further limitation must be made. In cases where the awards are not binding on the parties unless they accept them beforehand or subsequently, and where such awards cannot be declared binding by the State as in Germany, legal remedies properly so called hardly arise. A conciliation proposal can certainly have far-reaching effects, even without being formally binding, and may, through public opinion, exert a notable influence on the parties (cf. Canada, Great Britain). But this is a moral influence, and cannot be set aside by judicial means unless the decision has been made illegally, without fulfilment of the formalities required for validity, or through fraud, chicanery, etc. These cases, as also obvious mistakes, e.g. clerical errors, made by the institution come under the ordinary regulations concerning the contestation and correction of errors committed in the course of administration or by public authorities, which cannot be dealt with in detail here.

Thus legal remedies in the strict sense do not apply to the decisions of systems in the first group³ ; but there is still the very important question of the course to be taken when conciliation proceedings have ended in a proposal which is not accepted by

¹ Cf. DERSCH : *Die neue Schlichtungsverordnung*, 2nd ed., Note 7 (d) to section 1, subsection 5.

² Cf. section 18 of the second Order for the Administration of the Conciliation Order (appeal against the chairman's rulings).

³ I.e. the first group mentioned on pp. 113 et seq. in the discussion of the legal nature of awards.

the parties. The proceedings having failed, it must be decided whether new proceedings may or should be opened, and, if so, under what conditions.

As far as can be ascertained, only a few countries whose systems belong to the first group have explicitly settled the question; in most of them, these cases are apparently decided as they arise on consideration of the circumstances, without a general regulation being considered necessary. The Finnish and Norwegian Acts are typical of those which contain an explicit regulation, and the German Order resembles them in its treatment of cases where the State does not intervene to declare the award binding¹. The latter provides as follows:

If conciliation proceedings have already taken place in respect of a dispute, and if they have led neither to an agreement nor to a binding award, further conciliation proceedings shall be instituted only with the agreement of all the parties concerned, or if the public interest requires it².

Similarly, under the Finnish Act, fresh proceedings on the same subject cannot be instituted "except at the joint request of the parties or when an alteration occurs in the dispute itself, or in circumstances of importance to the formation of an opinion thereon"³. A joint application by the parties is also required by the Norwegian Act⁴, but if at the end of a month the dispute is not settled and no such application has been received, it is the duty of the official conciliator to institute fresh proceedings⁵.

It may be concluded from these regulations that fresh proceedings cannot be instituted in a matter already dealt with unless certain conditions are fulfilled. First of all, it is obvious that if the circumstances are unchanged, an understanding between the parties with regard to a repetition of the proceedings is both necessary and sufficient. Systems based on the principle of agreement aim solely at facilitating conciliation in every respect without authoritative intervention; and the State must welcome this fresh opportunity to use its influence in the direction of conciliation between the parties, with their permission. But it naturally cannot allow a party which is not satisfied with an award to re-open proceedings on the same subject immediately afterwards

¹ Cf. above, p. 115.

² Section 12, para. 3, of the second Order for the Administration of the Conciliation Order.

³ Section 16.

⁴ Section 38.

⁵ The Act also uses the expression "to reopen the proceedings".

against the will of its opponents. In such a case the proposals of the institution would be worthless, and its prestige undermined in advance. To this extent, therefore, proposals for conciliation have to a certain extent the force of a final judgment even in systems without compulsion¹.

But, on the other hand, this force is strictly limited. If the circumstances alter², or if public interests require intervention, there must be a possibility of a repetition of the proceedings and of a fresh proposal for conciliation, though in theory this proposal might well be identical with the first if the conciliation institution came to the same opinion on the situation as before.

This characteristic limitation of a conciliation proposal's force as a final judgment is another manifestation of the difference between conciliation and arbitration proceedings on the one hand and judicial proceedings on the other. The latter deal with disputes on rights, existing law is expounded and applied, and judgments given are of a different nature and far more final. The settlement of disputes on collective interests by conciliation and arbitration is in fact less a judicial than an administrative and even a legislative function of the State, and in its performance the principles of civil law concerning finality can be applied only after careful adaptation to the special needs of this branch of law³.

If this is true of the systems which do not recognise compulsion, it is all the more so of those which provide for enforcement, and in particular those whose proceedings are based on or similar to those of a court of law (the Australian States, New Zealand and Italy).

First of all — as is natural in such proceedings — these systems often provide for ordinary legal remedies of appeal and review (plea of nullity, plea of cassation) and reversal. The New South Wales⁴, Western Australian⁵, South Australian⁶ and Queensland⁷

¹ This is true of the German system too, as may be seen from the passage quoted, for it belongs in principle to the "agreement" group, though in practice authoritative State intervention in the form of a declaration that an award is binding plays a very important part.

² According to the Norwegian Act this is presumed after expiration of the monthly delay.

³ Cf. also on the legal position in Germany: DERSCH: "Rechtskraft und Abänderlichkeit von Staatsakten der Schlichtungsbehörden", in *Neue Zeitschrift für Arbeitsrecht*, 1923, pp. 274 et seq., 360 et seq., 409 et seq., 481 et seq.; and *Die neue Schlichtungsverordnung*, second edition, pp. 223 et seq.

⁴ Section 30: appeal to the Crown.

⁵ Section 86.

⁶ Sections 54-57 and 196.

⁷ Sections 17 and 18.

Acts provide for the right of appeal, while the Italian Act permits revocation and review ¹.

The fact that these systems are modelled on courts of law, even in the matter of the right of appeal, does not, however, lead to the full logical conclusion in respect of finality of judgment, as would be the case in ordinary judicial proceedings. The nature of disputes that are trials of strength makes it inevitable that these systems should adopt the same attitude as those built up on agreement, and limit the finality of the decision taken. With variation in detail, the systems mentioned make this limitation by permitting variations in such decisions in accordance with an alteration in the circumstances, which is often considered to have occurred as soon as a certain period has expired. The countries in question permit such alterations to be undertaken on the initiative of the institution or on application by the parties. The Australian Commonwealth Act, for instance, provides as follows ²:

Notwithstanding anything contained in this Act, if the court is satisfied that circumstances have arisen which affect the justice of any terms of an award, the court may, in the same or another proceeding, set aside or vary any terms so affected.

The powers conferred on the court by this subsection shall not be construed as limiting in any manner any power conferred on the court by any other provision of this Act.

Another provision ³ further empowers the court "to vary its orders and awards and to re-open any question", though an application by the aggrieved party or by the Attorney-General is necessary for the exercise of this power ⁴. The New South Wales ⁵, Western Australian ⁶, South Australian ⁷, Queensland ⁸ and New Zealand ⁹ Acts contain similar provisions. The Italian regulation on the subject is very interesting, for it provides that "if a considerable change in the circumstances of the case takes place, the party concerned or the Public Prosecutor may apply to the court which issued the award for a review thereof even before the expiry of the time limit fixed in the award for its

¹ Section 16, para. 3, of the Act of 3 April 1926 and section 88 of the Decree of 1 July 1926.

² Section 28, subsection 3.

³ Section 38.

⁴ Section 39, para 2.

⁵ Sections 25, subsection 2, and 28 (but cf. section 58, subsection 1) and also section 45 (b) mentioned on p. 111.

⁶ Sections 88, 89, 90.

⁷ Sections 21, subsection 1, and 36, subsection 2.

⁸ Sections 23 and 62.

⁹ Section 92, subsection 1 (a).

validity". Apparently to prevent baseless claims calculated to harm the prestige of the *magistratura del lavoro* and its awards, the Decree continues as follows : " If the application is disallowed, the party which applied for review shall be liable to a fine not exceeding 10,000 lire." ¹

It is remarkable that the German regulations contain no similar legal remedy against a decision by the conciliator or the Federal Minister of Labour declaring an award binding. But in this case it must be remembered that in contrast to the systems in Australia, New Zealand and Italy, an award thus made binding in Germany is guaranteed only by civil and not by penal sanctions. The question of a legal remedy against the decisions of conciliation and arbitration has, however, already been raised in Germany. As the law at present stands, a review of the objective rightness and efficacy of the decision is not possible, and the only possible subject for judicial review is the observance of the regulations for procedure ².

¹ Section 89 of the Decree of 1 July 1926.

² For details cf. B. HUECK-NIPPERDEY : *Lehrbuch des Arbeitsrechts*, Vol. II, first and second editions, pp. 402 et seq., and KASKEL : *Arbeitsrecht*, third edition, pp. 370 et seq.

The German law of contract also covers the possibility of liberation from obligations arising out of collective agreements, which include compulsory agreements based on declarations that awards are binding ; according to this law, the renunciation of an agreement is permissible under exceptional circumstances if economic conditions change (*Clausula rebus sic stantibus*). Cf. HUECK-NIPPERDEY : *Lehrbuch des Arbeitsrechts*, 1929, Vol. II, p. 176, and KASKEL : *Arbeitsrecht*, third edition, p. 53. The provision of the New South Wales Act cited on pp. 111 et seq., is also interesting in this connection.

CHAPTER VII

CONCILIATION AND ARBITRATION AS CONTRASTING PRINCIPLES — CONCLUSIONS

In the previous chapters the numerous national conciliation and arbitration systems have been compared from a legal standpoint and used as a basis for the discussion of the legal significance of the internationally important questions raised by conciliation and arbitration in their successive stages. As each essential point was dealt with, it could be seen that the regulation of the whole procedure varies from system to system with the legal consequences attached to decisions, whether proposals for conciliation, awards or judgments. The more authoritative the intervention of the State in these decisions, the more markedly does the principle of regulation and even of compulsion spread back from the conclusion of the proceedings to their every stage. In practice, the mere creation of State conciliation and arbitration bodies entails the exercise by the State of a certain influence on the parties in their relations to one another — an influence which may vary from country to country according to local conditions, but which is undoubtedly in certain cases very tangible. In many systems this influence grows with the proceedings, in that compulsory measures of various sorts are prescribed — compulsory application to the institution, compulsory participation when a plaint has been brought, compulsory attendance, compulsion to give evidence and information, suspensive prohibition of strikes and lock-outs, etc. — ending up in a certain number of systems with complete compulsory arbitration with decisions binding on the parties and guaranteed by civil or even penal sanctions. There are thus, between systems based solely on the principle of voluntary agreement, and those recognising compulsory arbitration, numerous transition stages represented by systems which have provided for various sorts of compulsion during the proceedings, but which do not enforce the decisions reached.

There can therefore be no mutually exclusive distinction between systems based on conciliation and those based on arbitration, which form rather the two extremes of a series. But that

this is so should not be allowed to obscure the fact that none, not even the most stringent, of the compulsory measures for the advancement of the proceedings, e.g. for the elucidation of the facts — apart from the consideration that in their most highly developed form these are to be found only in conjunction with compulsory arbitration proper — represents an intervention by the State in any way comparable with that entailed by the compulsory regulation of actual conditions of employment in the guise of binding decisions by conciliation and arbitration institutions. Such decisions are no mere details of procedure, but important excursions into positive law ; like voluntary agreements, they create new law to regulate the relations between parties. And for this reason the battle round the structure of conciliation and arbitration systems concentrates on the question whether the State shall be allowed to intervene in the regulation of these relations and so in economic life, if conciliation fails.

A comparative study of all the essential points, based on the various Acts, has already shown which States have decided in favour of such intervention and what form it takes ; but the question is so important that, in conclusion, a further discussion of the principles involved is advisable.

First of all, it may be useful to recall what is in general the object of conciliation and arbitration in trials of strength between workers and employers concerning the regulation of labour conditions ¹. The essential object is to arrive, by recourse to a given form of procedure, at that legal regulation which is always necessary for the maintenance of peaceful relations between parties, i.e. without open conflicts such as are likely to interrupt production and entail other dangers. The problem is similar to that of the peaceful regulation of the conflicting interests of States ², and similar also to that before a national constitution in its widest sense. Such a constitution must provide the legal basis for the combination of rival groups in one unit of life and labour, the commonwealth ; it must arrange for the adjustment of their conflicting interests within the unit, and at the same time ensure the legal continuity of its own existence by adapting itself to changing needs and forces, so as to avoid subversive violence. It is impossible to say in the abstract which is the most effective

¹ For a discussion of the concept of these disputes cf. pp. . . . et seq.

² SCHINDLER in his paper *Werdende Rechte* (Floiner's edition) was probably the first to remark on this connection. Cf. also HAMBURGER : *Streik, Aussperrung und Berufsverbände im neuen englischen Arbeitsrecht*, pp. 4-5.

principle of international law and which the best constitution ; nor can it as a rule be determined with any certainty whether the principle of conciliation, under which decisions are not compulsory, or that of arbitration, with its compulsory awards and even compulsory enforcement of awards, should in every case be preferred. The question is reasonable only in respect of the conditions in a given country, and even when so limited it is hard to answer, witness the controversy in Germany arising out of the proposals for reform ¹. It is all the harder to find an answer at once impartial and in accordance with the facts because the persons directly concerned on one side or the other are closely interested and the position they take up will therefore depend on their real or imagined interests. Furthermore, the state of trade and the balance of political power may change and lead to a corresponding change in interests ; supporters of compulsion may thus become its opponents and vice versa ².

The reasons, brought forward by employers in particular, against authoritative intervention by the State in the regulation of conditions of employment are principally economic. In their relations with the workers, a large proportion of employers are still guided — at least so far as the regulation of conditions of employment, particularly wages, is concerned — by the idea of free competition, as it existed in the days of individualism and *laissez-faire*, i.e. by the principles of a system in which wages and prices fix themselves automatically according to the state of the market. From this standpoint the determination of wages by the State, in so far as it does not follow the tendency of the market but fixes a higher level, perhaps for social reasons, must appear as an intolerable interference with the free play of economic forces. Employers also declare that it is both illogical and disastrous to lay upon their shoulders the responsibility and the risk of an undertaking with its problems of production and marketing, and at the same time to prescribe official rates for one of their most important cost factors — labour.

To this, labour may reply that the free play of economic forces has already suffered very considerable limitation through cartels and other price-fixing arrangements, and that in many industries it has practically ceased.

¹ The principles involved have been very closely examined in the German literature on the subject, and it is for this reason that most of the references in this connection are to German publications.

² This has happened, for instance, in Australia.

Employers cannot deny the existence of numerous restrictions in a system which is, in principle, free : but they reply that industry has imposed these restrictions on itself, to a large extent deliberately ; that they arose out of the needs of the moment and were adapted to them ; and that the intervention of the State, based on political motives and regardless of economic considerations, is something totally different.

Many holders of such views — and they are by no means exclusively employers — do not, singularly enough, object so strongly to the limitation by industry itself of the principle of the free market, that is to say, the efforts of employers to monopolise the regulation of the demand for labour and of workers to monopolise that of the supply. In fact, they accept the disturbance of the mechanism of the labour market by the independent action of their own associations, but denounce the participation of the State in the regulation of conditions of employment as an interference with the free play of the forces of capital and labour ; and they complain that such regulation is often based, not on economic but on political considerations that have nothing to do with the issue, e.g. the electioneering value of the regulation. These opponents of authoritative intervention declare that more harm than good will result from it, for, they say, it disguises and falsifies the true economic position of the parties and their relative force, postpones open conflicts, which are under certain circumstances necessary and wholesome trials of strength, and so aggravates the bitterness of the struggle.

The supporters of State intervention in the regulation of labour conditions reply that State conciliation and arbitration is, on the whole, to be regarded and organised, not as a judicial but, from the nature of the subject, as an administrative function, which cannot be performed without exposure to political influence¹ ; that the State naturally acts on political grounds in other spheres of administration — industry, tariffs, public services (railways, gas, water, electricity), taxation and, in particular, social policy ; and that to have a wages policy is therefore at least not illogical. The supporters of compulsion may deprecate abuses in “ political

¹ Even in a country like Italy such influence is practicable, for though the *magistratura del lavoro* is an authority with judicial independence, the Ministry of Corporations and the trade associations follow Government policy and make their influence felt in the most important disputes, which indeed seldom reach the *magistratura del lavoro*. This tendency was plainly visible during the general reduction of wages at the beginning of December 1930. The political influence here arose out of the State's exercise of its administrative functions.

wage-fixing", but hold the view that to distinguish between admissible and inadmissible influence in individual cases is very difficult, and that "hard cases make bad law". In their opinion really important labour disputes in the modern State have become political matters and can be decided only in accordance with the general policy of the Government, which must be consistent if it is to be successful¹; and they will perhaps finally declare that in countries whose conciliation legislation does not recognise authoritative intervention by the State, the pressure of public opinion — educated politically far more than economically — is quite or nearly equivalent to compulsion by the State.

There is no doubt that these conflicting views raise essential questions of State industrial and social policy. To attempt their investigation here is impossible, and in any case they cannot be solved by scientific methods, but must be answered in accordance with personal views and beliefs².

Workers often object to conciliation and arbitration for the reason, based on a criticism both of their technique and of their politico-legal consequences, that they are calculated to endanger the existence of trade organisations by taking from them and transferring to the State one of their principal objects, the achievement of favourable conditions by their own efforts, and by depriving

¹ Cf. recent discussions in Germany on the extent to which the Reichstag may intervene in individual cases in adjustment proceedings; cf. RICHTER: "Parlamentsverwaltung im Schlichtungswesen", in *Neue Zeitschrift für Arbeitsrecht*, Dec. 1930, p. 729, and FRAENKEL: "Die rechtliche Bedeutung des Beschlusses des Reichstags im Berliner Metallarbeiterkampf" in *Betriebsräte-Zeitschrift der Funktionäre der Metallindustrie*, No. 22, 8 Nov. 1930, pp. 677 et seq. The arbitration courts in Australia and New Zealand are, as far as could be discovered, independent judicial authorities. A special investigation would be necessary to decide whether administrative and political influence might not be exerted here indirectly through the minimum wage-fixing machinery.

² For a discussion of the principles apropos of the reform of the German regulations, see the interesting polemic between GRAUERT (employer) and TARNOW (worker) in *Magazin der Wirtschaft*, 1930, No. 7, pp. 327 et seq., No. 8, pp. 373 et seq., No. 10, pp. 467 et seq.; cf. also HOENIGER: "Schein und Wirklichkeit im Schlichtungswesen", in *ibid.*, 1931, pp. 372 et seq.; WINSCHUH: "Aufgabe und Gestalt des Schlichtungswesens", in *ibid.*, 1929, No. 22, pp. 839 et seq.; ZIMMERMANN, "Einigungswesen, Zwangsschlichtung, staatliche Lohnregelung", in *Kölner sozialpolitische Vierteljahrsschrift*, Vol. VIII, Nos. 1 and 2, pp. 6 et seq.; also theses by MARTIN: *Das Schlichtungswesen in der modernen Wirtschaft*, Jena, 1929, and HÖNIGSCHMIDT-GROSSICH, LEIDIG and LÖHR: *Zwangsschiedspruch und Schlichtungswesen*, Jena, 1929, and articles by NÖRPPEL and BROECKER in *Die Arbeit* and *Die Gewerkschaftszeitung*, particularly NÖRPPEL: "Probleme des Schlichtungswesens und des Tarifrechts", in *Die Arbeit*, 1929, No. 3, pp. 141 et seq. (where the other articles are cited). For the various recent views of workers with regard to compulsion, see the examples given in the INTERNATIONAL LABOUR OFFICE: *Report of the Director*, 1931, section on conciliation and arbitration. Also Ludwig OPPENHEIMER: "Deutsch-französische Aussprache über Schlichtungswesen und öffentliche Wirtschaft", in *Sozialistische Monatshefte* Dec. 1930, pp. 1211 et seq.

them of the right to strike. It is true that in systems with fully developed compulsory arbitration, open labour conflicts are either strictly limited or absolutely forbidden.

This view is logically connected with an objection, often raised by employers and sometimes also by workers, namely that compulsory arbitration destroys the sense of responsibility of the parties concerned. No one experienced in the psychology of conciliation and arbitration can doubt that there is here no small degree of truth; and for this reason most systems which have both institutions separate the two completely, even when arbitration is based on an arrangement between the parties, in order that the possibility of an award may not endanger the chances of conciliation. The British regulation typifies this sharp distinction, for no attempts at conciliation are made once a case has come before the Industrial Court, but an award follows immediately after the parties have been heard and any necessary evidence has been taken ¹. A satisfactory transition from conciliation to arbitration is certainly one of the most difficult practical tasks facing legislators on the subject ².

Disputes in public utility undertakings (hospitals, railways, gas, water, electricity, etc.) are often separately dealt with in the national systems. It must be recognised that the public is particularly concerned in such cases, and that the authoritative intervention of the State can be justified for reasons (maintenance of public order, supply of the necessities of life, etc.) which are less often valid in other labour disputes. Difference of opinion on the admissibility and value of intervention in such cases is much less common, and employers who are otherwise definitely opposed to authoritative intervention admit its necessity here under certain conditions ³.

The chief reasons — whether based on economic or political views, or on considerations of legal technique — for the positions adopted by those directly concerned, whether for or against the principle of arbitration, have now been given, but certain considerations of a general nature may help to throw light on this important subject.

It is apparent that the conciliation and arbitration systems which now exist have been carefully adapted to and grafted on to

¹ Cf. also the provision forbidding permanent mediators to act as arbitrators: Finland, section 14, para. 2; Netherlands, section 29; Sweden, section 8, para. 3.

² Cf. in this connection FREYTAG: *Die sozialpolitische Schlichtung, Versuch einer systematischen Erfassung des Schlichtungsgedankens*, pp. 92 et seq.

³ Cf. the proposals of the German Federation of Employers' Associations for the amendment of the Conciliation Order of April 1929.

“the general legal and economic systems of the States in which they are in force¹. Three types of function have been distinguished², which conciliation and arbitration undertake in accordance with the nature of each national system ; these are the maintenance of industrial peace, assistance in the determination of relations between employers and workers by means of collective agreements, and the authoritative regulation of labour conditions.

It is plain that States whose constitution and legal system are still based to a great extent on the *laissez-faire* principle possess conciliation systems which occupy themselves largely or exclusively with the first type of function, namely, peace-making. Great Britain and the other English-speaking States, except Australia and New Zealand, belong to this group. In these countries the decisions, which are in reality only mediating proposals, are never compulsory unless arbitration has been previously arranged by the parties. It is significant that these States have no legislation on collective labour agreements.

Next, most of the industrially important States on the Continent of Europe, such as Austria, France, the Netherlands, Norway, Sweden, etc., have incorporated in their legal systems — originally built up on the individualist principle — certain elements of collective law, the chief of them, in the present connection, being concerned with collective labour agreements. The systems of these countries have thus assumed the second type of function, the determination of collective relations, though this is usually implicit rather than specified. They do not, it is true, recognise compulsory decisions, but they go further than the States of the first group, for the arrangements made by mediation are, as collective agreements, binding at least in civil law in some way or other, while in the English-speaking countries they are simply “ gentlemen’s agreements ”.

The determination of collective relations is thus clearly one of the functions of conciliation and arbitration in the States of the second group. In Germany it is a specific duty of the institutions³. This fact accords with the marked progress made by collective law in Germany since the Revolution in 1918, of which the highly developed collective labour law is an important manifestation. But

¹ Cf. for this and the following, WEDDIGEN : *Einigungs- und Schiedsgrund-atz*, already referred to on several occasions, which describes this adaptation excellently.

² Cf. pp. 45 et seq., and also SITZLER : “ Soziale und wirtschaftliche Bedeutung der staatlichen Schlichtung ”, in *Neue Zeitschrift für Arbeitsrecht*, 1930, No. 1.

³ Cf. above, pp. 5 and 49 et seq.

the German system has gone a step further. During the troubles which followed the war, the State intervened—often merely following up analogous intervention during the war—to regulate and decide matters in important economic fields (coal, electricity, the cartel system, etc.) and in general wherever public authorities engaged in industry. Corresponding to this economic activity of the State and particularly to its influence on prices, there was naturally also State influence on wage determination. By declaring awards binding, the arbitration institutions assumed the third function of conciliation and arbitration—the regulation of labour conditions. But the law confines the use of these declarations to certain specified cases which affect the public interest; and they entail civil consequences only. The law in fact still holds to the principle of civil freedom of contract for parties to collective labour agreements¹.

The systems in which this third function of conciliation and arbitration is fully developed and applied go further (Italy, Russia, Australia, New Zealand). In Italy and Russia this function—the authoritative determination of labour conditions in cases where free negotiation has failed, or where the result of such negotiation appears contrary to public interest—is logically in keeping with the whole legal and constitutional system of the two States.

In Australia and New Zealand the exercise of this function by conciliation and arbitration institutions cannot be characterised so simply. As has been noticed² it is connected with the minimum wage legislation usual in these States, that is to say, with State machinery, based on collective law, for the authoritative settlement of certain of the questions dealt with by conciliation and arbitration. In other respects, however, judicial principles and practice in these States seem still to be inspired by the *laissez-faire* attitude, as in the other English-speaking countries. This is perhaps the real reason why the persons concerned have so severely criticised the Australian and New Zealand compulsory arbitration systems, especially of late, and why the systems, particularly those of Australia, are so constantly being altered. These events appear to justify the conclusion that the general legal and industrial systems of these countries are not yet fully compatible with compulsory arbitration.

¹ It is also important that the "compulsory agreements" arising out of declarations that awards are binding do not create any obligation to offer or accept employment, but only define the conditions that must be observed in the case of employment within the scope of the agreement.

² Cf. above, p. 151.

On the whole, the above considerations tend to the conclusion that a country's conciliation and arbitration system has the best chance of success if it is essentially in keeping with the general legal system of that country. In many cases where, despite such an apparent accordance, the existing system does not seem to give complete satisfaction, this is — apart from criticisms directed against its working in individual cases — perhaps due to the fact that the legal system is itself in course of transformation and has not been able to adapt itself satisfactorily to the wide social and economic changes which are now taking place. Individualist and collectivist forms of economic and legal organisation are competing in well-nigh every State which possesses developed or developing industries, and it is inevitable that this contest should also extend to the determination of the best form of conciliation and arbitration. The battle is apparently still in full swing ; it is idle to make prophecies concerning its result, and idle to conjecture which principle will conquer, that of conciliation or that of arbitration with its concomitant function of regulating labour conditions.

However right or wrong the reasons given by the parties concerned for and against compulsory arbitration may be — and this is not the place to decide the question — and however the battle between the individualist and the collectivist form of economic organisation, and so the dispute on the arbitration principle, may end, one fact emerges clearly from a review of the various systems : everywhere, even in countries with fully developed compulsory arbitration, voluntary conciliation between the parties is regarded as the first object, while compulsion is held to be an evil even where recourse to it is the rule. It should be remembered that in all systems where such a thing is possible the creation of voluntary conciliation and arbitration institutions is encouraged ; that as a rule these have precedence over the State machinery¹ ; and that even in countries with compulsory arbitration, such as Australia and New Zealand, more and more importance has of late been attached to the conciliation bodies and commissioners appointed, many of them in the recent past, to supplement the arbitration courts. In Italy, too, almost all disputes are in practice settled by negotiation between the trade organisations of various degrees or before the Ministry of Corporations, without the need of State intervention in the form of a judgment by the *magistratura del lavoro*.

¹ Cf. above, p. 17.

It is immediately comprehensible that such authoritative intervention is regarded as a necessary evil, even where it is permitted and customary ; for, before every award, it must be decided afresh which principles are to be followed, and so the problem which has been outlined — industrial, social, political — arises again as difficult as ever. General considerations of social and economic justice are not sufficient. Attempts, even those made by way of agreement, to lay down principles for future decisions, have so far had a limited application only¹. Compulsory decisions, too, will therefore as a rule be in accordance with the bargaining power of the parties, otherwise they might not be obeyed, despite compulsion and the threat of penalties²; and they will only, as has often been said, “ anticipate the probable result of an open conflict ”³. This too is certainly a difficult task, but for that reason all the more worthy of consideration. The ideas developed above show that not until the collective principle gains more ground in the legal system of a State will systematic considerations of the general economic interest⁴ take their place beside and above those of the comparative strength of the parties and this they will do to an increasing degree as the industrial system shifts from a private to a public basis. It is neither possible nor desirable to give an opinion here on the comparative value of the two principles ; it is only necessary to point out how difficult it is to make a correct compulsory award, and how wise almost all States are in giving voluntary agreement preference over compulsory State intervention.

In the above brief review of the position taken up by the most important systems towards authoritative intervention by the State, all the differences and contrasts between the manifold forms of procedure have been focussed, so to speak, and displayed in aggravated shape. It is hardly necessary to point out that these far-reaching differences and contrasts, which become increasingly evident with every additional stage of the proceedings, make it difficult to find common features. Nevertheless, there are such features, and a short reference to them may be permitted in bringing this study to its close.

¹ Cf. “The Conciliation and Arbitration of Industrial Disputes ”, in *International Labour Review*, Vol. XV, No. 1, 1927, pp. 93 et seq., and bibliography.

² (f. above, p. 124.

³ LUTZ-RICHTER, in *Soziale Praxis*, 1929, No. 40, p. 980.

⁴ In this connection reference may be made to the “ Oohnhauser ” award in 1930. This, remarkably enough, made a wage reduction in the industry in question depend upon a reduction in the price of its products. (*Neue Zeitschrift für Arbeitsrecht*, 1930, col. 486.)

First of all, there is the basic fact that the creation of conciliation and arbitration machinery is provided for by law in every State of industrial importance. This machinery is put at the disposal of employers and workers in the case of disputes, and in particular of those on collective interests, which are the subject of this study. The conciliation or arbitration bodies are usually set up, not afresh for each individual case, but once for all, so that they are permanently at the disposal of anyone in need of them. Further, there is wide agreement concerning the composition of these bodies. Except where independent mediators are appointed, the members of the court or board represent employers and workers in equal numbers and are either proposed in individual cases by the parties to each dispute, or over longer periods, as a rule by the trade organisations. A chairman, independent of the two parties and often required to prove his qualifications for such a post, usually controls the proceedings and gives the casting vote if necessary. Independence, impartiality and, in the case of the assessors, the obligation to serve and to maintain discretion, are often guaranteed by law, in many cases under threat of penalty. More and more efforts are being made to induce the trade organisations — particularly those of the workers — to act directly as parties to the proceedings, so as to secure that any agreements reached will be respected. The procedure itself is usually elastic, and adaptable to the particular needs of each case. Utilisation of the institutions by parties is made as easy as possible, notably by absence of pecuniary charges. For important cases affecting the public interest many systems provide that the institution may open proceedings on its own initiative and compel the parties to attend by threat of fines. Proposals for conciliation, once accepted by the parties, usually entail a legally binding collective contract or at least a “gentleman’s agreement”, respect of which is as well guaranteed by the honour and self-respect of the parties as if it were made legally binding. There is also apparently increasing recognition of at least a moral obligation to postpone open conflicts until all the possibilities of agreement provided by voluntarily or legally instituted proceedings have been exhausted, particularly in disputes in public utility services, where the pressure of public opinion must also be reckoned with. As important disputes, whose causes and results are not directly visible, increase in number, it is being generally recognised that the facts can be more efficiently and impartially elucidated through separate investigation proceedings. Such proceedings call for increased efforts carefully to explore the economic circum-

stances as a basis for the regulation of conditions of employment, and to make the results of investigation available for the conciliation bodies. Finally, if there is a system of arbitration, whether set up by agreement or by an Act, providing thus for authoritative intervention by the State, side by side with the conciliation system, a sharp distinction is usually made between the two, in order that the parties' will to agree may not be unduly weakened during the conciliation stage. Agreement is everywhere preferred to compulsion, even where the latter is allowed ; and the encouragement of this will to agree is, explicitly and implicitly, everywhere the first and foremost aim.

These are probably the most important features which, despite the great diversity, may be regarded as common to all conciliation and arbitration systems and at least justify the following final remarks.

The conciliation and arbitration systems of all countries represent one consistent effort to guide employers and workers — in their own interests and in that of society — towards peaceful methods in their struggle for a share of the product of labour — a struggle which is a manifestation of the life instinct in man and therefore inevitable ; to show them that they need one another however natural the antagonism between them, and that they must meet in some form of productive collaboration if they are to live. Conciliation and arbitration are thus a symbol of that ideal of the community of interest between workers, employers and society which is the basis of modern labour law and also of the constitution of the International Labour Organisation.

SUPPLEMENTARY NOTE

The first part of this volume had already been compiled and was in the press when information was received as to the detailed provisions of the Act of the Australian Commonwealth of 18 August 1930 (Act to amend the Commonwealth Conciliation and Arbitration Act, 1904-1928). This Act introduces important changes in the previous legislation, in particular with regard to penalties which, to a considerable extent, are removed or rendered much less severe. It is true that important provisions in the new Act have since been declared by the High Court to be unconstitutional ; nevertheless, the comparative studies made in this work, in so far as they deal with the regulation of arbitration by federal legislation, and in particular to the penalties for the enforcement of arbitral awards, no longer entirely hold good after the change in legislation. The description of the previous legislation retains, however, its value as a typical example, an example which is also to be found in a similar form in the legislation of the individual States of Australia.

For the detailed provisions of the new Act the reader may refer to the text itself (*Legislative Series*, 1930, Austral. 11), to the monograph on Australia and to the article in the *International Labour Review* by Mr. O. de R. Foenander on " The New Commonwealth of Australia Conciliation and Arbitration Act " ¹.

The New Zealand arbitration legislation has often been referred to in this comparative study as a typical example of compulsory arbitration. The New Zealand Act of 27 April 1932 ² has practically done away with this. We refer the reader to the Supplementary Note to the monograph on New Zealand, in which the essential content of the provisions of this Act is given.

¹ *International Labour Review*, Vol. XXIV, No. 6, 1931, p. 699.

² *Legislative Series*, 1932, N.Z.1.

**CONCILIATION AND ARBITRATION
IN THE DIFFERENT COUNTRIES**

GREAT BRITAIN

§ 1. — Economic Background and Development

The estimated population of Great Britain and Northern Ireland in 1928 was 45,623,000, the total area being 94,600 square miles. At the time of the last census (1921), the number of occupied in Great Britain was 19,357,319 out of a total population of 42,919,710, the chief occupations being metal working, in which nearly 2 million people were engaged ; commercial work (excluding clerks and professional men) in which $1\frac{3}{4}$ millions were engaged ; transport and communication, occupying between $1\frac{1}{2}$ and $1\frac{3}{4}$ millions ; agriculture, occupying nearly $1\frac{1}{2}$ millions ; mining and quarrying, in which nearly $1\frac{1}{4}$ millions gain their livelihood ; and textile workers numbering over a million.

Both employers and employed have attained a high degree of organisation. At the end of 1927 the total membership of trade unions in Great Britain and Northern Ireland amounted to 4,908,037, of whom 4,115,929 were males and 792,108 females ¹. In 1920 the total membership of trade unions was as high as 8,336,000.

Among the largest and most powerful unions may be mentioned those in the mining and quarrying industry, numbering 678,033 ; those in the engineering, shipbuilding and similar trades, numbering 547,989 ; the general labour unions, with 448,305 members ; the railway trade unions, with a membership of 413,319 ; the trade unions in the cotton trade, with an aggregate membership of 354,128 ; the general transport unions, with 367,001 members ; trade unions of people employed in the national, local and government services, aggregating 340,638 ; and teaching trade unions with a membership of 205,490. The Trade Union Congress which, in 1928, represented 160 organisations with a total membership of 3,814,842, is the central trade union body ².

¹ These figures include a number of employers' trade unions with a membership of some 44,000.

² For further details of trade unionism in Great Britain, see INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Volume II. Studies and Reports, Series A (Industrial Relations), No. 29.

EVOLUTION OF THE PRESENT SYSTEM

The system of conciliation and arbitration of industrial disputes in operation in Great Britain has a long history behind it¹, but so far as the present methods are concerned it may be regarded as being in large part the growth of the last thirty or forty years. This period falls conveniently into three divisions: the pre-war position, the position during the war and the position after the war.

The Pre-War Position

In 1891 a Royal Commission was appointed to enquire into various questions affecting the relations between employers and workmen and to report whether legislation could with advantage be directed to remedy any faults that might be disclosed. This Commission found some eight methods of settling trade disputes within an industry actually in practical working. It classified these various types of machinery as follows:

- (1) negotiations between individual employers and deputations or representatives of their own workmen;
- (2) negotiations between individual employers and trade union officials acting on behalf of their workmen;
- (3) negotiations between officials of trade unions and officials of employers' associations;
- (4) occasional meetings between committees of trade unions and committees of employers' associations, with possibly at the same time a standing joint committee to settle minor questions of a judicial nature;
- (5) more or less regular and periodical meetings between such committees;
- (6) formation of joint committees or wages boards either for a whole trade or for the section of a trade in a particular district or for a single establishment, with regular constitution and rules of procedure;
- (7) provision for reference of special cases to an arbitrator approved by both parties;
- (8) embodiment in the constitution of joint committees or other negotiatory bodies of a provision for referring questions to arbitration in the event of disagreement.

As an outcome of the work of this Commission, the Conciliation Act of 1896 was passed. This Act did not attempt to introduce any new principle, but contented itself with what amounted to little more than codifying the methods already in operation. The chief powers conferred by this Act (originally on the Board of Trade and afterwards on the Ministry of Labour) in regard to conciliation and arbitration were as follows: where a difference existed or was apprehended the Board of Trade could enquire into the difference; could take steps to enable the parties to the difference

¹ *Industrial Arbitration in Great Britain*, by Lord AMULREE (Sir William Mackenzie), traces the evolution of conciliation and arbitration practices in Great Britain from the time of its earliest beginnings.

to meet together with a view to amicable settlement of the difference ; on the application of either party could appoint a conciliator ; on the application of both parties could appoint an arbitrator. In 1908 the provision for arbitration under this Act was extended, a Court of Arbitration being set up by the Board of Trade. Panels of chairmen and of representatives of employers and workers were constituted and courts consisting of three or five members were selected from these panels as occasion required.

In addition to the statutory means of effecting conciliation and arbitration thus provided, voluntary organisations for the settlement of disputes increased in number throughout the period preceding the war. The *Second Report on Rules of Voluntary Conciliation and Arbitration Board and Joint Committees*, published by the Board of Trade in 1910, gives details of the constitution and procedure of such organisations. Of the 252 boards and committees investigated 153 had complete automatic machinery for the settlement of disputes, 81 (of which 67 were in the building trades) had complete machinery for the settlement of disputes but to be used only by mutual consent of the parties, while the remaining boards had no specific provisions for avoiding a deadlock. Besides these boards, conciliatory agencies of a similar type existed as a result of agreements in a number of industries, particularly the engineering and shipbuilding trades.

In 1911 an attempt was made in the shape of the Industrial Council to improve on the existing methods of preventing and settling labour disputes. This Council was made up of twenty-six prominent men nominated by the Government and drawn in equal numbers from employers' and workers' organisations, with a Chief Industrial Commissioner appointed by the Government as chairman. The Industrial Council was designed to act as a National Conciliation Board. In this capacity, however, it achieved but little success. Its main work was done on an enquiry requested by the Government on the subject of agreements. In this and in other matters it did much to pave the way for the Whitley reports some five years later, but otherwise it must be counted as an experiment that failed.

Position during the War

During the war a large number of extraordinary measures were passed with the intention of maintaining and increasing production. These among other things made provision for conciliation and compulsory arbitration over large areas of industry.

In February 1915 a Committee on Production was set up. This Committee was later absorbed by the Ministry of Munitions, whereupon it became an arbitration body and quickly developed into the principal arbitration tribunal for the settlement of labour disputes.

In March of the same year the Treasury Agreement on the subject of the acceleration of output on Government work was negotiated. By this agreement representatives of a large number of trade unions agreed that stoppages of work on munition manufacture should not take place during the war, machinery for the prevention of disputes that might arise under the agreement being also devised. The Munitions of War Act, 1915, introduced compulsory arbitration at the option of the Board of Trade, together with the legal prohibition of strikes and lock-outs in certain circumstances and the statutory enforcement of awards. These were further increased by the Munitions of War Act, 1916, which extended the definition of munitions work and established new arbitration tribunals for women and semi-skilled and unskilled men. The scope of the war-time conciliation and arbitration machinery was further extended by the Munitions of War Act, 1917, which, among other things, made provision for the legal extension of awards to the whole of a trade or industry.

Under the procedure of the Munitions of War Acts arbitration became the normal method for the settlement of labour disputes. From the point of view of the workpeople it was more expeditious to claim arbitration under these Acts than to endeavour to secure a settlement by conciliation machinery or other negotiations. On the employers' side also arbitration was often found to be the most satisfactory procedure, for when so much work was being done for Government purposes, the employers' financial interests in the result of negotiations was diminished. During the four years 1915-1918 nearly 8,000 awards were issued by arbitration tribunals under the Munitions of War Acts.

By the Wages (Temporary Regulation) Act of 1918, the sections of the Munitions of War Act relative to the prohibition of strikes and lock-outs were repealed, but a form of compulsory arbitration was still retained for the time in the form of an interim Arbitration Court. Apart from this, however, the legal status of conciliation and arbitration was restored to its pre-war condition.

Position after the War

The evolution of the system of conciliation and arbitration in Great Britain after the war is mainly wrapt up with the reports of

the Committee on Relations between Employers and Employed, usually known as the Whitley Committee. This Committee issued a number of reports during the years 1917-1918, the net effect of which so far as the prevention and settlement of industries disputes is concerned, was : (1) the setting up of joint industrial councils by many industries, together with a certain number of district councils and works' committees, and (2) the passing of the Industrial Courts Act, 1919¹. The nature and importance of this machinery is dealt with in the ensuing chapter.

In addition to these two developments, statutory provision for the prevention and settlement of labour disputes was made immediately after the war in two major industries — by the Mining Industry Act, 1920, and the Railways Act, 1921. The machinery in the coal-mining industry has never been set up. The railway machinery is in effect a voluntary agreement between the parties concerned, to which statutory force has been given, being comparable in many ways to the national joint industrial councils set up without legislation under the Whitley scheme.

Efforts to devise something in the nature of a standing joint committee of national scope were made in 1918-1919 and again by the Melchett-Turner Conferences in 1928-1929 ; but in both cases without success. A proposal made in 1919 to set up a national association of joint industrial councils, on the other hand, was adopted, the object of this association being to take joint action in making representations to the Government and of promoting the exchange of ideas and the discussion of matters of common interest. This Association has not dealt to any extent with specific questions of conciliation and arbitration, but its labours may be considered to have had the effect of contributing towards the solution of difficulties over which disputes commonly arise.

§ 2. — The System in Force

The system of conciliation and arbitration in force in Great Britain may be said to be dominated by two central principles : first, that the prevention and settlement of disputes must be essentially voluntary, both in the letter and in the spirit ; second, that adequate organisation of both sides is to be desired. On this

¹ *Legislative Series*, 1920, G.B. 1.

second point the pronouncement of the Whitley Committee is noteworthy :

The essential condition of securing a permanent improvement in the relations between employers and employed is that there should be adequate organisation on the part of both employers and workpeople. The proposals outlined for joint co-operation throughout the several industries depend for their ultimate success upon there being such organisation on both sides ; and such organisation is necessary also to provide means whereby the arrangements and agreements made for the industry may be effectively carried out.

In describing the various types of conciliation and arbitration machinery at present in operation in Great Britain, it is convenient to make the division into governmental and non-governmental machinery. The governmental machinery includes the Conciliation Act of 1896, the Industrial Courts Act of 1919 and the Railways Act of 1921. The non-governmental machinery includes the joint industrial councils set up in response to the recommendations of the Whitley Committee and the machinery created by the various industries on their own initiative.

GOVERNMENTAL SYSTEMS

The main provisions of the Conciliation Act of 1896 have already been described. Its chief use at the present day is to enable the Ministry of Labour to take mediatory and conciliatory action wherever and whenever it judges such action advisable. For this purpose a special Department in the Ministry of Labour is maintained. The work of this Department is purposely unobtrusive, its object being to facilitate meeting and eventual agreement between the parties at variance, and not in any way to appear in the guise of quasi-arbitrators.

The Industrial Courts Act of 1919 provides for voluntary arbitration and for enquiry. According as the parties concerned desire, a dispute referred for arbitration under this Act may be brought before the Industrial Court itself or before one or more persons appointed by the Ministry of Labour or before a Board of Arbitration formed *ad hoc*, such board consisting of one or more persons nominated by the employers, a similar number nominated by the workmen and an independent chairman appointed by the Minister.

The Permanent Industrial Court consists of persons appointed by the Ministry of Labour, of whom some are independent persons, some represent employers and some represent workmen. For the purpose of dealing with any matter which may be referred to it

the Court is constituted by such person or persons as the President may direct. The usual procedure is for each case to be heard by a Division Court consisting of the President or a Chairman selected from one of the independent persons and other members representing the employers and workpeople respectively. The general practice is for the Court to sit as a panel of three. It is within the discretion of the President to utilise the service of assessors.

Cases are referred to the Industrial Court by the Minister of Labour, but only in the event of the three following conditions having been observed :

- (1) a report made to the Minister of the existence of a dispute by either of the parties concerned ;
- (2) it having been shown to the satisfaction of the Minister that no agreement exists by which the dispute can or may be settled by conciliation or arbitration or that such means have been tried without success ;
- (3) the consent of both parties having been obtained.

The Court decides on the general form of procedure. Usually the case for each side is put by one of the interested parties or by an official of the employers' association or trade union as the case may be. Occasionally one or both of the parties appear by counsel or solicitor but the appearance of legal representatives of the parties is in the discretion of the Court. Evidence is not taken on oath, nor is the attendance of witnesses enforced by civil process. Hitherto, industrial arbitrations in Great Britain have as a rule been held *in camera* and the Industrial Court, in deference to the desire of the parties, has followed this policy at its hearings, but there is no statutory provision that this should be done.

Wherever the Court is constituted of more than one member and the members are unable to agree as to the award the question is decided by the Chairman. The award of the Court depends for its observance upon the honour and civic sense of the parties. There is no provision made for its penal enforcement.

The section of the Industrial Courts Act dealing with the powers of enquiry conferred upon the Ministry of Labour provides that the Minister may enquire into the causes and circumstances of a dispute and if he thinks fit refer any matters connected with it to a court of enquiry which, either in public or in private at its discretion, enquires into the matter and reports to the Minister. A court of enquiry thus constituted consists of a Chairman and such other persons as the Minister may think fit to appoint. It has

compulsory powers insofar as it may require the attendance of witnesses and the production of documents. It is not in any sense, however, a court of arbitration and its report, even though it may amount to a judgment upon as well as an explanation of the points at issue, is not in any way binding upon the parties.

The machinery set up in the railway industry by the Railways Act of 1921, although statutory in form, follows the lines of an agreement between the parties concerned and is generally comparable with the joint machinery existing in other industries to which no statutory expression has been given. The machinery in this industry is considered to be one of the most developed forms of joint negotiation in existence in Great Britain.

Under the terms of the Railways Act all questions relating to rates of pay, hours of duty or other conditions of service are referred, in default of agreement between the railway companies and the railway trade unions, to a Central Wages Board or on appeal to a National Wages Board. The Central Wages Board consists of eight representatives of the railway companies and eight representatives of the railway employees, the former being appointed by the railway companies, the latter by the railway trade unions in an agreed proportion. The National Wages Board is composed of six representatives of the railway company, six representatives of the railway employees (appointed by the railway trade unions) and four representatives of the users of railways (to wit, one representative appointed by the Parliamentary Committee of the Trades Union Congress, one by the Co-operative Union, one by the Association of British Chambers of Commerce, and one by the Federation of British Industries), together with an independent chairman nominated by the Minister of Labour. In addition to this machinery it is laid down that one or more councils shall be established for each railway company consisting of officers of the railway company and representatives of the men employed by the company elected by the men. These railway councils deal with such questions as the application of national agreements, suggestions as to operating, working and kindred subjects, and other matters in which a company and its employees are mutually interested. Provision is also made for sectional railway councils and for local departmental committees each with a definite sphere of action.

An important feature of the scheme agreed upon between the railway companies and the railway trade unions is that the National Wages Board shall come to a decision on any matter referred to it within twenty-eight days from the date of reference from the

Central Wages Board and it is agreed that no withdrawal of labour shall take place before the expiration of the twenty-eight days.

NON-GOVERNMENTAL MACHINERY

The non-governmental machinery for the prevention and settlement of industrial disputes in operation in Great Britain consists of the so-called Whitley Councils, being organisations of the type suggested by the Committee on Relations between Employers and Employed presided over by the Rt. Hon. J. H. Whitley in 1916-1917, and the systems set up by various industries on their own initiative for dealing with disputes.

Whitley Councils

As already stated, the Whitley Council machinery as originally conceived was tripartite in form, consisting of National Joint Industrial Councils covering the whole of an industry, District Councils covering part of an industry, and works committees covering a single undertaking. In the actual working out of the proposals, attention has been given chiefly to the National Joint Industrial Councils.

A National Joint Industrial Council consists of representatives of the employers and representatives of the trade unions of an industry. The purpose of these bodies is the prevention, fully as much as the settlement, of disputes, it being held by the Whitley Council that "regular meetings to discuss industrial questions, apart from and prior to any differences with regard to them that may have begun to cause friction, will immediately reduce the number of occasions on which in the view of either employers or employed it is necessary to contemplate recourse to a stoppage of work". The list of questions considered as suitable to be dealt with by these councils includes the better utilisation of the practical knowledge and experience of the workpeople; means for securing to the workpeople a greater share in and responsibility for the determination and observance of the conditions under which their work is carried on; the settlement of general principles governing the conditions of employment, including the methods of fixing, paying and re-adjusting wages; establishment of regular methods of negotiation for issues arising between employers and workpeople with a view both to the prevention of differences and of their better adjustment when they appear; means of ensuring to the workpeople the greatest possible security of earnings and employment;

methods of fixing and adjusting earnings, piece-work prices, etc. ; technical education and training ; industrial research ; the provision of facilities for the full consideration and utilisation of inventions and improvements designed by workpeople and for the adequate safeguarding of the rights of the designers of such improvements ; improvements of processes, machinery and organisation ; and proposed legislation affecting the industry.

The following passage, taken from the Survey of Industrial Relations made by the Committee on Industry and Trade in 1926 sums up very briefly the services performed by joint industrial councils in the conciliation and arbitration of industrial disputes :

In the field of conciliation and arbitration, the Councils have played an important part in assisting the industries to settle their differences themselves. The constitution of a large number of Councils provides that no stoppage of work shall take place until the matter in dispute has been considered by the Council, and this applies also to those Councils which do not include the settlement of wages among their functions. In some cases, as for example, quarrying, a definite procedure has been instituted for the prevention and settlement of disputes. In the case of the Wool Council, panels of chairmen and arbitrators have been constituted for the purpose of dealing with disputes arising in individual establishments. A later development has been the *ad hoc* appointment on the initiative of the National Councils for the Tramways, Electricity Supply and Wool Councils, in association with the Ministry of Labour, of Tribunals to inquire into and make recommendations to the Councils on differences which had arisen. Experience has shown that the existence of a Joint Industrial Council, on which the organisations on both sides are constantly in touch, and on which there is regular intercourse between the employers' and workpeople's representatives, has enabled differences to be dealt with at an early stage, and has diminished the opportunity for disputes to arise through lack of understanding ¹.

There are some forty National Joint Industrial Councils in existence (of which rather less than half have district or local joint bodies associated with them) and some dozen or more bodies (interim industrial reconstruction committees, sectional industrial councils and district councils) exercising similar functions.

Works Committees

The number of works committees in existence and active operation in Great Britain cannot be estimated with any assurance. In the report on the establishment of the progress of joint industrial councils published by the Ministry of Labour in 1923, the estimate is hazarded that "considerably over 1,000 works committees have been formed". The decline in the number of works committees, however, would appear to have been fairly rapid since 1920.

¹ *Survey of Industrial Relations*, pp. 298-299.

In the pottery industry, for instance, over a hundred works committees were formed. Later enquiry indicated that only twenty-four of these committees were then working. The report of the Committee on Industry and Trade, dealing with industrial relations, states that while " it is impossible to give statistics of the number of committees in existence, it is a matter of common knowledge that a large number have survived the peculiarly difficult conditions of the last five years, and that many of these have been successful both in fulfilling the objects which the Whitley Committee had in view and also in other directions ".

Systems Set Up by Particular Industries

The systems for the prevention and settlement of industrial disputes set up in various industries other than on the Whitley plan have in many cases a long and highly successful record. The boot and shoe industry, the cotton industry, the iron and steel industries and the engineering and shipbuilding industries are among those having machinery for negotiation of long standing. The nature of the machinery varies from industry to industry, but may be said as a general rule to consist of a hierarchy of joint committees (with or without neutral chairmen), local disputes being dealt with by representatives of the parties to the dispute and larger questions by representatives of the employers and trade unions in the industry. In some cases provision is made for optional arbitration in the event of conciliation proceedings failing to effect a settlement, but conciliation of an essentially non-compulsory sort is the most prominent feature.

In view of their importance in the British system of conciliation and arbitration some brief account of the schemes in operation in certain industries is given here.

Boot and shoe industry. — Boot and shoe manufacture presents one of the most interesting examples of what can be done by means of machinery set up by an industry itself. Organisation in this trade is long-standing and relatively simple, the manufacturers' associations being federated into one organisation, while the workpeople are organised in a single union. Conciliation machinery has been in existence in this industry for over thirty years. Following a dispute in 1895, an agreement was reached providing for the formation of local boards of arbitration and conciliation composed of equal numbers of representatives of employers and workmen in the district, these boards to have full powers to settle all

questions submitted to them concerning wages, hours of labour and conditions of employment, subject to certain restrictive regulations. It provided also that no strike or lock-out should be entered into by either party represented on the boards thus set up. In addition, a provision was made for the appointment of an umpire to determine disputed points arising out of the agreement.

At a Conference in 1910, this agreement was extended by the provision of monetary penalties in the event of either party not complying with this agreement, each side making a deposit of £1,000. Up to 1920 there were thirteen cases in which fines were imposed in accordance with the terms of the agreement.

Since 1895, annual conferences of the parties under a neutral chairman have been held, at which questions relating to wages, hours, overtime and conditions of service have been dealt with and agreements entered into. At the Annual Conference held in 1914 a standing committee of the Conference, consisting of three representatives of each of the parties, was constituted to deal with all matters arising out of the national agreements, including any disputes that might arise as to the interpretation of such agreements. In December 1922, the agreement arrived at dealt with wages (including a cost of living sliding scale), holidays, provisions for the settlement of disputes, including local arbitration boards, the regulation of boy and the classification of female labour, overtime, strikes and lock-outs (including the continuance of the monetary penalty referred to above). This agreement has been reviewed periodically at a Conference between the parties presided over by an independent chairman appointed by the Minister of Labour.

In addition to the machinery already described, there is a National Joint Industrial Council which was constituted in May 1919. On account of the well-established machinery already in existence, however, this Council does not concern itself with questions relating to wages, hours, overtime and conditions of employment, and is not therefore in this sense negotiatory machinery.

The system of conciliation and arbitration thus set up has for some time past militated against any serious dispute occurring. A few stoppages have taken place in isolated instances but such disputes have been small.

Cotton industry. — The cotton industry affords an illustration of joint negotiation directed especially to the settlement of disputes

arising not only in the industry as a whole but also in the different localities or in the individual mills. Based on the effective organisation of both parties, arrangements have been entered into for the systematic consideration of differences arising in the industry. In the spinning section of the trade it is provided that no local employers' association or trade union shall countenance, encourage or support any lock-out or strike until the matter has been submitted to and considered by a local joint committee and, in the event of their failure to agree, by a joint committee of the Federated Association of Employers and the operatives' trade unions. In the weaving section of the trade, agreements likewise exist providing that notices of strike or lock-out shall not be tendered until the matter in dispute has been considered by local and central joint committees of the employers and operatives' organisations. Only in the event of all efforts failing is a local official at liberty to take a ballot vote of the members affected on the question of whether they should cease work to enforce the claim.

In addition to this joint machinery for dealing with local differences, the trade unions in the industry, together with those representing the dyers, bleachers, etc., are combined in a single association which deals with the wider interests of the operatives and acts in conjunction with the employers in various matters of general concern to the industry. While the standing arrangements previously referred to for dealing with local and district differences are operating constantly to remove friction and avoid disputes, the larger issues, such as changes in wages or matters of importance affecting the whole industry or the spinning or weaving section as a whole are negotiated directly between the central authorities of the organisations concerned. There are no standing arrangements for arbitration in case of breakdown of such negotiations and it is well understood by the parties that failure to arrive at a settlement may involve a general stoppage. It is stated that the realisation of the serious consequence of failure to agree has proved to be a potent factor making for peace on such occasions.

Iron and steel industries. — The iron and steel industries represent what is almost a classic example of successful negotiation within an industry resulting in the prevention of collective labour disputes. It was claimed until recently that for over thirty years the Iron and Steel Trades Confederation has not had an organised strike against the Steel Ingot Makers' Association (now merged in the Iron and Steel Trades Employers' Association). Much of this

success is to be attributed to the fact that in the iron trade a principle for the adjustment of wages, based on the selling price of iron has been recognised by both sides.

All the branches of this industry have long followed methods of negotiation and conciliation with much success either through joint meetings of the parties concerned to deal with any difficulty which may have arisen or through recognised conciliation machinery. The machinery for conciliation which has been agreed upon by the Iron and Steel Trades Association and the Iron and Steel Trades Confederation provides for conciliation in all disputes or differences, whether the question arising is peculiar to one workshop or to a particular district, or is a general question. The initial stage is that of conference between the works management and the workmen concerned, with the assistance if desired of the shop representative, district secretary or national organiser of the workmen's union. Failing a settlement, a neutral committee is appointed to decide the issue, the committee members being chosen from an associated works neutral to the works where the dispute exists. Should this neutral committee not be able to reach a settlement then reference may be made either to a Conference of representatives of the employers' and of the workers' organisations, or to arbitration. Provision is also made for local or district conferences on questions affecting more than one works, for national conferences on general questions, and for arbitration on all questions as a last resource. Similar agreements exist between organisations in other departments of the industry. Having regard to the magnitude of the industries covered, it may be said that the number of cases actually referred to arbitration is few. At the same time there appears to be a readiness on the part of all parties to go to arbitration as a last resource. There has been, however, a number of stoppages since the war although none of these stoppages was on anything approaching a national scale.

§ 3. — Results and Opinions

The most remarkable feature of the statistics on strikes and lock-outs in Great Britain over the period 1893-1931 is the number and size of the stoppages of work during the post-war years, culminating in the general strike and prolonged stoppage in the coal-

mining industry in 1926. General coal-mining stoppages also occurred in 1893, 1912, 1920 and 1921 and account largely for the magnitude of the figures for those years.

Year	Number of disputes beginning in year	Number of workpeople directly involved in disputes beginning in year	Aggregate duration in working days of all disputes in progress during year
1893	599	597,000	30,440,000
1894	903	254,000	9,510,000
1895	728	205,000	5,700,000
1896	906	142,000	3,560,000
1897	848	166,000	10,330,000
1898	695	199,000	15,260,000
1899	710	137,000	2,500,000
1900	633	132,000	3,090,000
1901	631	111,000	4,130,000
1902	432	115,000	3,440,000
1903	380	93,000	2,320,000
1904	346	56,000	1,460,000
1905	349	67,000	2,370,000
1906	479	158,000	3,020,000
1907	585	100,000	2,150,000
1908	389	221,000	10,790,000
1909	422	168,000	2,690,000
1910	521	384,000	9,870,000
1911	872	824,000	10,160,000
1912	834	1,232,000	40,890,000
1913	1,459	497,000	9,800,000
1914	972	326,000	9,880,000
1915	672	401,000	2,950,000
1916	532	235,000	2,450,000
1917	730	575,000	5,650,000
1918	1,165	923,000	5,880,000
1919	1,352	2,401,000	34,970,000
1920	1,607	1,779,000	26,570,000
1921	763	1,770,000	85,870,000
1922	576	512,000	19,850,000
1923	628	343,000	10,670,000
1924	710	558,000	8,420,000
1925	603	401,000	7,950,000
1926	323	2,724,000	162,230,000
1927	308	90,000	1,170,000
1928	302	80,000	1,390,000
1929	431	493,000	8,290,000
1930	422	286,000	4,400,000
1931	420	424,000	6,980,000

A special study of the period 1910-1924 yields a number of interesting facts concerning the magnitude, causes and results of the stoppages of work in Great Britain.

The outstanding feature in the statistics of the magnitude of stoppages of work during this fifteen-year period is the fact

that whereas only 2 per cent. of the strikes and lock-outs were of such extent as to affect directly 5,000 or more workpeople, this 2 per cent. of large strikes nevertheless accounted for 71 per cent. of the workpeople involved in disputes and 83 per cent. of the working days lost. Still more remarkable is it that the twenty-five largest disputes occurring during this period resulted in a loss of 196 million out of a total of 283 million working days, of which large coal strikes alone accounted for 129,489,000 days¹.

Turning to the causes of strikes and lock-outs, 66 per cent. of the stoppages during this period concerned wages, while 4 per cent. only were attributable to disputes concerning hours of labour. For the rest 15 per cent. of the disputes were due to "employment of particular classes of persons", 6 per cent. to "other working arrangements, rules and discipline", 7 per cent. to "trade unionism" (i.e. questions of trade union principle) and 2 per cent. to "miscellaneous causes".

If the number of workpeople directly involved is taken into account the outstanding importance of wages as a cause of industrial disputes is yet more strongly emphasised. During the fifteen-year period under consideration 69 per cent. of the workpeople engaged in disputes stopped work on account of wage questions, 7 per cent. over questions of hours of labour, 8 per cent. over employment of particular classes of persons, 6 per cent. over other working arrangements, rules and discipline, 8 per cent. over questions affecting trade unionism and 2 per cent. over other miscellaneous causes.

The results of stoppages of work during this period 1910-1924 show 44 per cent. of the cases as being eventually settled by compromise between the two parties, 30 per cent. as settled in favour of employers, and 26 per cent. in favour of workpeople, the corresponding proportions as regards the number of workpeople involved being 66 per cent., 15 per cent. and 19 per cent. respectively.

METHODS OF SETTLEMENT

The following table shows the method of settlement of the stoppages of work occurring during the period 1910-1924, as also

¹ If the 1926 coal strike were taken into consideration these figures would be even more striking.

the number of workpeople directly involved. The corresponding figures for the years 1925-1931, as published annually in the *Ministry of Labour Gazette*, are also given.

METHODS OF SETTLEMENT, 1910-1924

Year	By direct negotiations between the parties or their representatives	By conciliation	By arbitration	By return to work on employers' terms without negotiation	Otherwise	Total
Number of disputes						
1910	357	33	25	66	44	521
1911	635	80	21	67	69	872
1912	620	65	22	69	58	834
1913	1,129	118	24	117	71	1,459
1914	717	54	27	108	66	972
1915	408	44	58	105	57	672
1916	343	48	68	47	26	532
1917	461	87	112	31	39	730
1918	747	138	177	56	47	1,165
1919	1,042	83	108	54	65	1,352
1920	1,184	128	62	122	111	1,607
1921	573	48	20	62	60	763
1922	408	54	9	59	46	576
1923	478	49	22	51	28	628
1924	492	75	19	64	50	700
	9,594	1,104	774	1,078	833	13,383
Number of workpeople (thousands) directly involved						
1910	192	163	9	18	2	384
1911	278	513	14	16	3	824
1912	286	59	13	22	852	1,232
1913	361	95	15	23	3	497
1914	172	127	7	17	3	326
1915	95	248	27	24	7	401
1916	116	31	61	15	12	235
1917	167	114	82	32	180	575
1918	435	171	155	62	100	923
1919	1,694	62	147	269	229	2,401
1920	1,593	89	34	57	6	1,779
1921	1,719	14	7	28	2	1,770
1922	476	9	1	24	2	512
1923	229	38	20	54	2	343
1924	314	188	19	33	2	556
	8,127	1,921	611	694	1,405	12,758

METHODS OF SETTLEMENT, 1925-1931

Year	By direct negotiations between the parties or their representatives	By conciliation	By arbitration	By return to work on employers' terms without negotiations	By replacement of workpeople	Otherwise
	Number of disputes					
1925	423	44	10	68	44	
1926	219	19	6	45	20	7
1927	227	15	4	30	19	12
1928	199	14	4	55	21	8
1929	279	25	12	80	24	11
1930	265	39	9	68	32	9
1931	274	34	3	62	33	14
	Number of workpeople (thousands) directly involved					
1925	165	26	166	10	8	
1926	77	5	1	10	1	---
1927	69	7	5	5	---	3
1928	55	5	1	19	1	---
1929	79	5	391	16	1	1
1930	174	88	3	20	1	1
1931	205.7	163.1	3.7	47.7	1.4	2.6

From these tables it will be seen that during the fifteen-year period 1910-1924 72 per cent. of the total number of settlements, accounting for 65 per cent. of the total number of workpeople involved, were made by direct arrangement between the parties. Next in numerical importance was the method of conciliation by which 8 per cent. of the total number of disputes were composed, involving 15 per cent. of the total number of workpeople. Recourse to arbitration terminated 6 per cent. of the disputes, affecting 5 per cent. of the workpeople. Return to work on the employers' terms was recorded in the case of 8 per cent. of the disputes, affecting 5 per cent. of the workpeople. Five per cent. of the disputes were settled by replacement of the workpeople, but as these were mainly small disputes the proportion of the workpeople involved in stoppages who lost their employment in this way was almost negligible — only about a quarter of 1 per cent. Other methods of settlement accounted for only 1 per cent. of the total number of disputes, but in these disputes 11 per cent. of the total number of workpeople were involved, 7 per cent. being engaged in one dispute, namely, the stoppage of work on the part of 850,000 coalminers in 1912, the matter at issue in which was

ultimately settled by the passing of the Coal Mines (Minimum Wage) Act 1912.

It is of interest to note that during the war years 1915-1918 the proportion of disputes settled by arbitration rose as high as 13 per cent. and the proportion of workpeople involved in disputes thus settled to 15 per cent.

These figures showing the methods of settlement of disputes do not give a full picture of the activity of the official conciliation and arbitration machinery, inasmuch as they refer only to those disputes which gave rise to a stoppage of work. As stated in the following passage (extracted from the Report of the Ministry of Labour for the year 1928) the chief work of this machinery is done in disputes where a stoppage of work is prevented :

The work of the Department has been marked by the early association of its officers with the discussion of questions likely to become the subject of disputes and this work, while not susceptible of statistical measurements, has produced useful results in directing the discussion of those questions along lines calculated to provide a basis of agreement. In most cases agreements have eventually been reached by the parties themselves without the further intervention of the Department. Officers of the Department have been actively associated with over 500 differences during the year, in addition to dealing with a much larger number of inquiries on industrial matters, and in 38 cases officers were personally associated with the final negotiations which produced settlements. The policy of the Department is to avoid unnecessary intervention and to encourage the parties to reach a settlement themselves. Many thousands of workers were concerned in these differences which, in the main, were settled long before relations became strained.

The number of cases settled with the assistance of the Board of Trade and the Ministry of Labour under the Conciliation Act, 1896, and the Industrial Courts Act, 1919, is shown in the following table :

Year	Number of cases	Year	Number of cases
1896	11	1913	99
1897	37	1914	81
1898	12	1915	397
1899	11	1916	1,412
1900	21	1917	2,474
1901	33	1918	3,583
1902	21	1919	1,323
1903	17	1920	920
1904	12	1921	272
1905	14	1922	103
1906	20	1923	167
1907	39	1924	252
1908	60	1925	257
1909	57	1926	137
1910	67	1927	103
1911	92	1928	103
1912	73	1929	94

The record of the Industrial Court and of Courts of Enquiry is set out in the following table showing the number of cases referred during each year to the Industrial Court itself, to single arbitration, to *ad hoc* boards and to Courts of Enquiry.

Year	Industrial Court	Single arbitration	<i>Ad hoc</i> Boards	Courts of Enquiry
1919	49	385	20	—
1920	540	73	15	6
1921	122	19	7	1
1922	37	9	8	1
1923	113	14	6	1
1924	143	7	12	7
1925	165	8	8	3
1926	104	5	4	1
1927	82	—	—	—
1928	52	—	—	—
1929	39	14	—	—

So far as non-Governmental agencies are concerned, the Report of the Ministry of Labour for 1928 states that " it is satisfactory to record that the activities of the councils in existence have in no way diminished. As in the past wages and working conditions have been the main subject of consideration by most of the councils, but in addition many councils have accomplished much other useful work. " Of the machinery set up by industries on their own initiative the same report states " it is satisfactory to recall not only a consolidation of conciliation machinery in the industries themselves, but also a steady growth in the habit of approaching differences with a desire to find an agreed settlement ".

OPINIONS

As regards prevailing opinion in Great Britain concerning the prevention and settlement of industrial disputes, there can be no question that both employers and workers are absolutely opposed to compulsory methods of any sort, nor would there seem any disposition on the part of the country as a whole to depart from the voluntary principle. The theory and general working practice is that every facility should be given to the parties concerned to encourage and to enable them to compose their differences in their own way. It is interesting to note however that in a *Report on Methods of Regulating Wages and Working Conditions*, published by the Scottish Trades Union Congress in 1930, the statement was

made that " the present circumstances of industrial life demand a greater measure of compulsion by the State to ensure that when disagreements over wages and conditions occur, the parties in disagreement be at least brought together — and that before strikes and lock-outs actually take place or are imminent ".

Next in importance to this general consensus of opinion in favour of voluntary methods is the general acquiescence in the practice by which trade union representatives take part in the negotiations. It may be considered as a cardinal precept of British industrial practice that adequate organisation on both sides is encouraged and by many is regarded as essential. It is true that opinions are expressed by certain employers showing a decided anti-union tendency — as, for the matter of that, there are individuals on both sides who are not wholly averse to compulsory arbitration — but, speaking generally, the right of the trade union to speak for its members is recognised.

On other less vital points there is considerable diversity of opinion. The proposal to make it possible for the Minister of Labour to apply the principle of the " common rule " to an industry, i.e. to make an agreement reached by a Joint Industrial Council or other similar body binding upon the whole of an industry, has been continually brought up, but no action has so far been taken. The question was considered at the Trades Union Congress in 1912 and 1913, and also by the Labour Party in 1913, but was rejected at all of these meetings. It was re-examined at the Trades Union Congress in 1921, 1923 and 1924, but on each occasion was, in one form or another, rejected. A number of Private Members' Bills have been introduced into the House of Commons having this object, but no action has been taken upon them.

§ 4. — Summary

The system of conciliation and arbitration in Great Britain thus consists of (1) governmental agencies, set up under the Conciliation Act 1896 and the Industrial Courts Act, 1919, which make provision for conciliation, optional arbitration (whether by a standing court, an *ad hoc* court or arbitrators specially appointed) and enquiry ; and (2) non-governmental agencies, namely the Joint Industrial Councils (" Whitley Councils ") and the various bodies and forms of procedure developed by organisations of employers

and workers in particular industries. In addition there is the machinery in the railway industry, statutory in form (having been set up under the Railways Act, 1921), but non-Governmental in fact.

Considered as a whole the system is essentially non-compulsory and is based upon the adequate organisation of both sides. Of the government agencies the conciliation machinery is the most used and the court of enquiry the least used. The non-Governmental agencies cover practically the whole of organised industry. Many of the large and old-established industries (coal, iron and steel, cotton, etc.) have not adopted the Whitley council system, preferring to keep the form of organisation that has been gradually developed over the course of years.

Great Britain suffered severely from industrial unrest in the years immediately preceding and the years following on the World War, the movement in the latter period culminating in 1926 in the general strike and prolonged stoppage of work in the coalmining industry. A few large stoppages, particularly in the coalmining industry, have been responsible for over two-thirds of the total number of days lost owing to strikes and lock-outs. Approximately two-thirds of the stoppages of work recorded have been over questions affecting wages. Some 15 per cent. of the actual stoppages of work are settled by means of conciliation and/or arbitration, but the Conciliation Department of the Ministry of Labour is instrumental in preventing many differences from reaching the stage of strike or lock-out.

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IRISH FREE STATE

The system of conciliation and arbitration in force in the Irish Free State is essentially similar to that in operation in Great Britain, the same two basic Acts — the Conciliation Act, 1896 and the Industrial Courts Act, 1919 — being applied, and like methods followed.

According to the *Irish Trade Journal* (the official organ of the Department of Industry and Commerce), conciliation of industrial disputes has tended during recent years to replace arbitration. It is stated that when a dispute occurs the Department of Industry and Commerce rarely experiences any difficulty in arranging a joint conference between the parties concerned.

The following tables show the number of stoppages of work, workpeople involved and working days lost for the years 1926-1931 :

Year	Number of stoppages of work beginning during the year	Number of workpeople involved	Number of working days lost
1926	57	3,455	85,345
1927	53	2,312	64,020
1928	52	2,190	54,292
1929	53	4,533	101,397
1930	83	3,410	77,417
1931	60	5,431	310,199

Of the total of 215 strikes and lock-outs occurring during these four years, 124 were over wage questions. These wage disputes led to the loss of 231,893 working days out of a total of 305,054

The method of settlement of stoppages of work during the years in question is shown hereunder :

Method of settlement	Numbers of disputes					
	1926	1927	1928	1929	1930	1931
Direct negotiation between parties	31	38	41	34	51	47
Voluntary conciliation	14	10	9	12	17	11
Voluntary arbitration	1	—	1	1	—	—
Terminated without successful negotiation	9	7	3	3	8	9
Total	55	55	54	50	76	67

Method of settlement	Numbers of workpeople involved					
	1926	1927	1928	1929	1930	1931
Direct negotiation between parties	2,510	1,152	1,391	1,429	1,410	1,760
Voluntary conciliation	456	957	593	2,978	1,726	3,603
Voluntary arbitration.	20	—	70	62	—	—
Terminated without successful negotiation	132	152	101	33	110	45
Total	3,118	2,261	2,155	4,502	3,246	5,408

The number of disputes in which the Trade and Industries Branch of the Department of Industry and Commerce intervened was as follows :

	1926	1927	1928	1929	1930	1931
(a) Disputes in which an actual stoppage of work had occurred	9	5	9	18	23	13
(b) Disputes in which a stoppage of work was averted	17	6	10	11	15	15

FRANCE

§ 1. — Economic Background and Development

In 1927, France had a population of about 40,960,000 inhabitants spread over an area of 550,986 sq. km. The rural population represents rather more than half the total.

According to the Census taken in 1921¹ the active population consisted at that time of 21,720,604 persons, that is, about 56 per cent. of the total population. They were distributed among the main occupational categories as follows : agriculture (including forestry and fishing) 42 per cent. or more than 9,000,000 persons ; industry and transport 31 per cent., and commerce 11 per cent.

More than 250,000 workers were employed in mining in 1921 and 72,500 in fishing.

The following industries are among the most important : cotton (over 188,600 workers in 1928) ; metallurgical (175 undertakings in 1925 employing more than 100,000 workers) ; refining (108 undertakings in 1927-1928 employing nearly 29,000 persons), and distilling and other branches of the wines and spirits industry.

According to statistics supplied by the Foreign Labour Department² 97,742 foreign workers — 63 per cent. for agriculture and 37 per cent. for industry — entered France during 1928. During the same year 53,759 foreign workers were repatriated.

Trade associations, which were prohibited by the Le Chapelier Act of 1791, remained illegal until 1884, when an Act was passed recognising the right of association.

The workers' unions have had their central organisation, the General Confederation of Labour (*Confédération générale du travail* — C.G.T.), since 1902. The activities of this body are carried on through the agency of permanent committees and mainly through the National Confederal Committee (*Comité confédéral national*).

¹ MINISTÈRE DU TRAVAIL : *Statistique générale de la France. Résultats statistiques du recensement général de la population, 1921*, Vol. I, Part 3, pp. 7-10.

² MINISTÈRE DU TRAVAIL : *Statistique générale de la France : Annuaire statistique, 1928*, p. 14.

In 1922 there was a split in the C.G.T. Part of its members left it and formed an organisation with Communist tendencies, the Unitary General Confederation of Labour (*Confédération générale du travail unitaire*), which in December 1928 had a membership of 375,000, while the membership of the General Confederation at the same date was 640,790.

Besides these two main groups, mention should be made of the National Confederation of Christian Workers (*Confédération nationale des travailleurs chrétiens*) which embraced 120,000 members. There are also other organisations of less importance.¹

The employers' organisations on their side organised themselves during the war into a General Confederation of French Production (*Confédération générale de la production française*), which to-day includes more than 1,200 particularly influential organisations. There is also a General Confederation of French Craftsmen; finally, the Chambers of Commerce also play an important part.

During the period of monarchy that preceded the Revolution of 1789 the workers' right of combination was not recognised, and the collective refusal to work was a punishable offence. These restrictions were not abolished by the Revolution. The Le Chapelier Act of 1791 prohibited combination for the purpose of refusing to work. Similarly, the concerted stoppage of work and every form of combination on the part of the workers for this object remained an offence after the introduction of the Napoleonic Penal Code, which also prohibited combination on the part of employers for the purpose of forcing wages down below a reasonable limit. Penalties were provided in the form of fines and imprisonment.

In spite, however, of the penalties provided by the law, the first half of the nineteenth century witnessed a great number of strikes. This was due to the rapid development of large-scale industry and the unbridled freedom of competition, which was not then regulated by any form of social legislation and prevented individual employers from satisfying the claims of their workers, even when such claims were legitimate. From 1848 to 1864 proceedings were taken in 1,144 cases of combination on the part of the workers, and heavy penalties were inflicted on 6,812 offenders.

In 1863, however, the typographical workers of Paris, who had quite justifiably declared a strike as a protest against the sudden withdrawal of their collective agreement, were imprisoned by

¹ *Freedom of Association*, Vol. II, pp. 107-115.

virtue of the Penal Code according to which their action was equivalent to an offence under common law. As a result of this incident, the necessity of modifying these provisions came under consideration.

A few months later the offence of concerted stoppage of work was abolished by the Act of 25 May 1864, and replaced by that of restriction of the freedom of work.

In recognising the right of combination, the legislative authorities did not intend to encourage strikes, but, on the contrary, to provide the parties concerned with the opportunity of coming to an agreement on conditions of labour by peaceful means.

This hope was not, however, realised; and the period that followed the passing of the 1864 Act and of the Act recognising the freedom of association (1884) was, on the contrary, characterised by a new outbreak of industrial disputes and stoppages. In order to put an end to them an attempt was made to set up machinery intended to encourage the peaceful settlement of disputes, such as joint associations, works councils, or permanent joint conciliation and arbitration boards. On the other hand, the system of collective agreements rapidly assumed great importance. But the lack of a body of generally applicable regulations to facilitate the peaceful settlement of labour disputes was still felt. This want was supplied when, following the introduction of a Bill drafted by Mr. Jules Roche, an Act on conciliation and arbitration in collective disputes between employers and wage earners or salaried employees was passed on 27 December 1892. This Act is still in force and its provisions will be considered in detail in the following section.

Since 1892 a very great number of Government Bills and parliamentary proposals have been introduced with the object of improving the system set up by the 1892 Act. Among such Bills that introduced in 1900 by Mr. Millerand, Minister of Commerce, and Mr. Waldeck-Rousseau, Minister of the Interior, deserves special mention.

The Bill covered only industrial or commercial undertakings employing not less than fifty workers or employees, the head of which had declared his willingness to accept the official system. In every such establishment a permanent works or workshop council, consisting of representatives of the staff, was to be set up with a view to preventing labour disputes.

These representatives, whose primary function was to be that of a conciliation committee, were to meet periodically with

the head of the undertaking himself or with his accredited representative, and to acquaint him with the demands of the staff. In the event of dispute, the parties were to choose arbitrators. Should the employer refuse to do this, the Bill, in a series of detailed provisions, conferred on the workers the right to declare a strike by a majority vote. Further, a Labour Council was to be set up in every district; it was to assemble *ex officio* immediately on the declaration of a strike, and to make an arbitration award. Such an arbitration award was to be binding, and to have the force of a collective agreement between the parties for a period of six months.

This procedure, however, concerned only the internal organisation of undertakings, and was not applicable to disputes extending to several undertakings or to a whole industry.

After having been first rejected in 1900, this Bill was introduced again with equal lack of success in 1902, 1906, 1910 and 1917. During the latter year, the situation created by the war made it necessary temporarily to adopt vigorous measures calculated to prevent any stoppage of work.

With this object, the Decrees of 17 January and 7 September 1917 were put into force. By virtue of their provisions, permanent conciliation and arbitration committees were set up in various districts, ensuring the rapid operation, guaranteed by penalties, of conciliation and arbitration machinery.

But although it was possible in wartime to eliminate strikes and lock-outs by this means, it was not easy to pass measures for the same purpose when peace was restored. This explains the failure of the new Bill introduced by the Government in 1920.

This Bill provided that the delegates, freely chosen by the workers, were no longer to be appointed permanently and in advance as under the previous Bills, but only whenever the danger of a dispute arose.

All collective disputes were to be submitted to conciliation procedure, for which conciliation committees might be set up by public administrative regulations. If the conciliation proceedings failed, the parties might have recourse to arbitration. No strike was to be allowed until conciliation or, in the event of its being accepted, arbitration had been attempted. Compulsory arbitration was provided for in the case of a certain number of undertakings, mainly public utility services. In the event of a collective stoppage of work in an undertaking of this kind, the Government might exercise a right of requisition.

The Bill provided for penalties in the form of fines and even of imprisonment for any employer who should prevent the delegates from performing their duties, any party who should refuse to attend a meeting of a conciliation committee or arbitration board, and any person who should provoke an unauthorised strike.

All arbitration awards were to be made known to the interested parties, and might also be published.

In 1921 an amendment to the Labour Committee's Bill was proposed which really amounted to a counter-proposal. It provided for the appointment of "permanent works representatives" in every undertaking employing not less than 100 workers or employees. District trade committees were also to be set up. In the event of a collective dispute, recourse to conciliation and arbitration through these district committees was to be compulsory. Penalties were also provided; but, except in the case of public utility undertakings, the normal exercise of the right to strike was not restricted. The counter-proposal of 1921 met with no more success than the earlier Bills.

Finally, in March 1929 the Government introduced a Bill drafted by Mr. Loucheur, Minister of Labour, providing for compulsory conciliation in collective labour disputes.

This Bill lays down provisions for a compulsory interview between the parties prior to any stoppage of work. From this interview onwards, and at all their meetings, the parties may be assisted and represented by their associations. If no settlement is reached and a strike is declared, conciliators may be chosen by the parties themselves, the Minister of Labour or the prefect.

When the choice rests with the Minister of Labour, he may also instruct the parties to appear before the Superior Conciliation Committee attached to the Ministry of Labour. This Committee is to consist of an equal number of employers and workers, chosen by the Minister from among the members of the Economic Council.

Finally, further measures of conciliation may be prescribed if the stoppage continues.

In the event of failure to reach a settlement, provision is made for arbitration procedure, recourse to which is however to be optional.

The Bill also lays down provisions for the conclusion of collective agreements in the event of a settlement, and if no settlement is reached for the posting of a report to this effect.

A fine may be imposed on any employer or worker who refuses to submit to compulsory conciliation or who interferes

with the free choice of delegates or hinders them in the exercise of their functions.

This Bill was passed by the Chamber of Deputies, with some amendments, on 25 June 1929.

It has not yet been ratified by the Senate, and the Act of 1892 is therefore still in force.

§ 2. — The System in Force

CONCILIATION

The Act of 27 December 1892 concerning conciliation and arbitration in collective disputes between employers and wage-earning or salaried employees¹ provides only for temporary conciliation committees, to be set up in the event of a dispute and with the agreement of those concerned. They consist of representatives of the parties concerned, and are convened by the justice of the peace, who directs their labours in an advisory capacity.

The parties are allowed free choice of their own representatives, who must not exceed five in number for each party and must be French citizens. Women may also be members of the committee on condition that they are of French nationality. Under the terms of the Act, the members of the committee are to be chosen from among the persons concerned, but it is permissible for the latter to be represented by members of their trade associations.

In order that conciliation proceedings may be instituted before a stoppage occurs, both or one of the parties must submit the matter under dispute to the justice of the peace of the "canton" in which the dispute has arisen, in a written report setting forth the subject of the dispute and the alleged cause and indicating the name, occupation and address of the persons making the application, their opponents, and the representatives chosen.

Such an application may also be made after the outbreak of the strike or lock-out. At this stage of the dispute, the justice of the peace may, if he considers it expedient, invite the parties *ex officio* to submit their difference to conciliation procedure. If the dispute extends to several industrial undertakings spread over several "cantons", this may result in several justices of the

¹ *Code du Travail*, Book IV (*Legislative Series*, 1924, Fr. 3).

peace being informed of the dispute simultaneously. In such an event either the justices or the parties themselves must agree to appoint a single justice as mediator.

The parties must in any case send a reply to the justice of the peace within three days, informing him of their acceptance or refusal. Failure to reply is taken to constitute a refusal. If the parties accept, the justice of the peace sends an urgent summons to the conciliation committee. The committee meets in his presence, although his rôle is limited to guiding its discussions. Any decision reached by the committee must be adopted unanimously by all the members. The terms of the settlement thus adopted have the force of a collective agreement.

The justice of the peace makes a report on the meeting of the committee. If an agreement is reached, this report is signed by the parties and the decision is communicated by the justice of the peace to the mayor of each of the communes to which the dispute extends, and publicly announced. Application for conciliation proceedings and refusal to take part in them are also made public by the mayor. Moreover, the Act authorises and facilitates the publication of the decisions by means of notices posted by the parties themselves.

Conciliation procedure is free of charge ; the application of the law is left entirely to the goodwill of those concerned and failure to apply it entails no penalties.

ARBITRATION

If the conciliation proceedings should be unsuccessful, the justice of the peace must try to bring about arbitration.

The 1892 Act leaves the formation of the arbitration board, like that of the conciliation committee, to the parties themselves.

The parties choose either a common arbitrator, or one or several arbitrators each. Membership of the arbitration board is open only to male French citizens, and women are therefore ineligible. The parties must define the questions submitted to the arbitration board in detail, and the board is bound to adopt some decision.

If the arbitrators fail to reach agreement on the terms of settlement of the dispute, they may choose another arbitrator to give the casting vote. If they are equally unable to agree upon the choice of this umpire, the latter is nominated by the president of the civil court.

The decision is formulated and signed by the arbitrators and handed over to the justice of the peace. As in conciliation procedure, it is sent to the mayor and made public by the posting of notices; and no penalties are provided under the Act.

When the arbitration award has been accepted by the parties, it has the force of a collective agreement.

CONCILIATION AND ARBITRATION IN COLLECTIVE DISPUTES BETWEEN SHIPPING COMPANIES AND CREWS

Special arbitration procedure for the settlement of collective disputes arising between shipping companies and crews was introduced by an Act of 22 July 1909 and a Decree of 19 March 1910¹. The Act originally provided for a Permanent Arbitration Board (*Conseil permanent d'arbitrage*), but until the war this body was never able to function, and Orders issued in 1917, 1918 and 1919 respectively replaced it by a system of superior arbitration boards (*commissions supérieures d'arbitrages*) consisting of representatives of the shipowners on the one hand and of the ships' crews on the other. The Permanent Arbitration Board was, however, re-established by a Decree of 24 September 1925² (amended by a Decree of 11 March 1930³). In its present form the Board is composed of two arbitrators, nominated by shipowners and crews respectively from among the magistrates of the Council of State, the Court of Cassation, or the Paris Court of Appeal. Each acts as Chairman in turn, and they are assisted by three assessors from the employers' and three from the workers' side, nominated in accordance with procedure laid down by sections 2, 3 and 4 of the Decree of 1925.

Conciliation

The Decree of 1925 provides for preliminary conciliation proceedings before the superintendent of shipping registration. This official convenes the parties either on his own initiative or at the request of one of them. Failure on the part of the conciliation committee to reach agreement is immediately reported to the Minister responsible for the mercantile marine.

If the meeting for conciliation takes place, the superintendent

¹ *Bulletin of the International Labour Office* (B. sl.), 1913, Vol. VIII, p. 171.

² *Legislative Series*, 1925, Fr. 12.

³ *Ibid.*, 1930, Fr. 2.

draws up a report of the terms of settlement agreed upon or of its failure to reach agreement, and communicates it to the Minister without delay.

Arbitration

Should the conciliation proceedings be unsuccessful the Minister must, as soon as he is informed of the fact, convene the Permanent Arbitration Board, whose decisions can only be valid if the two arbitrators, together with two assessors for each of the parties, are present. Any award issued by the Board must be adopted by a majority of the members, including the two arbitrators. When the Permanent Arbitration Board is not able to come to a decision, an umpire may be appointed with the consent of the parties. He may be nominated either by the parties themselves or by the Minister responsible for the mercantile marine, and must be chosen from among the magistrates who are eligible as arbitrators.

The arbitration award is made public by the posting of notices, and is inserted in the *Journal officiel* and in the Official Gazette of the Mercantile Marine Department.

CONCILIATION AND ARBITRATION IN COLLECTIVE DISPUTES BETWEEN SEA-FISHING UNDERTAKINGS AND CREWS

A Decree of 28 January 1927¹ provides special conciliation and arbitration machinery for the settlement of collective disputes in the sea-fishing industry, intended to function in the various fishing ports to be indicated in a subsequent Order. There are no penalties guaranteeing the provisions of this Decree.

Conciliation

Conciliation proceedings must take place in the presence of the superintendent of shipping registration (*administrateur de l'inscription maritime*). The latter, who intervenes in the dispute either *ex officio* or at the request of one of the parties, must try to bring the delegates of the crew and the employer's representative together in a conciliation committee, and, if they obey his summons, must try to bring about a settlement. If his efforts are successful, he draws up a conciliation report signed jointly by himself and the parties, and forwards it to the prefect.

¹ *Legislative Series*, 1927, Fr. 1.

If the parties fail to appear or if the conciliation proceedings break down, a report must similarly be drawn up, made public by the posting of notices, and communicated to the Minister responsible for the mercantile marine. Further, the prefect must be informed of the dispute as soon as possible.

Arbitration

Arbitration boards consisting of five sections, corresponding to the various ratings of the crews, must be set up every year in the various fishing ports listed for this purpose.

Each board consists of two arbitrators, who sit in connection with every dispute, and of an equal number of employers and employees for each section. The decisions of the board are only valid if the two arbitrators and at least two assessors for each party are present. The two arbitrators must be chosen from among the local magistrates, and each acts as chairman in turn. Detailed regulations are laid down for the nomination both of the arbitrators and of the various assessors by the trade organisations of employers and workers respectively.

In the event of failure to reach a settlement by way of conciliation, recourse is had to arbitration. In each case it is the duty of the prefect to convene the board and to summon the parties, who are allowed to send representatives in their place. Refusal to appear or abstention must be recorded in a report.

The arbitration board issues its award by a majority vote, after hearing the representatives of the parties and any other persons whom it may consider expedient.

The award is made public by the posting of notices, and is communicated to the Minister responsible for the mercantile marine.

§ 3. — Results and Opinions

The following table gives statistics of the strikes¹ that have taken place in France since the passing of the 1892 Act. It shows the number of workers affected and of working days lost².

¹ MINISTÈRE DU TRAVAIL: "Statistique des grèves", in *Bulletin statistique*, 1928. Lock-outs are very rare in France.

² The figures until 1915 include the number of working days lost by workers involuntarily out of employment. Those from 1916 onward refer only to the number of working days lost by strikers proper. The corresponding figures for 1913 were 2,200,759 and for 1915 44,344.

Year	Number of strikes	Number of workers affected	Number of working days lost
1893	634	170,123	3,174,850
1894	391	54,576	1,062,480
1895	405	45,801	617,469
1896	476	49,851	644,168
1897	356	68,875	780,944
1898	368	82,065	1,216,306
1899	739	176,772	3,550,734
1900	902	222,714	3,760,577
1901	523	111,414	1,862,050
1902	512	212,704	4,675,081
1903	567	123,151	2,441,944
1904	1,026	271,097	3,934,884
1905	830	177,666	2,746,684
1906	1,300	438,466	9,438,594
1907	1,275	197,961	3,562,220
1908	1,073	99,042	1,752,025
1909	1,025	167,492	3,559,880
1910	1,502	281,425	4,830,041
1911	1,471	230,646	4,096,393
1912	1,116	267,627	2,318,459
1913	1,073	220,448	2,223,781
1914	672	160,566	2,187,272
1915	98	9,361	55,278
1916	314	41,409	235,907
1917 (a)	696	293,810	1,481,621
1918 (b)	499	176,187	979,634
1919	2,026	1,150,718	15,478,318
1920	1,832	1,316,559	23,112,038
1921	475	402,377	7,027,070
1922	665	290,326	3,935,493
1923	1,068	330,954	4,172,398
1924 (c)	1,083	274,865	3,863,182
1925	931	249,198	2,046,000
1926	1,660	349,309	4,072,163
1927	396	110,458	1,046,019
1928	816	204,116	6,376,675
1929	1,256	220,944	—
1930	1,220	324,316	—

(a) 671 results known. — (b) 453 results known. — (c) The figures for 1924 onwards include Alsace-Lorraine. — (d) Provisional figures (including lock-outs).

If the general tendency of these data is considered, it will be found that for the period from 1893 to 1903 they indicate a yearly average of 533 strikes affecting 119,822 workers and entailing the loss of 2,162,418 working days. From 1904 to 1913 there was an average of 1,170 strikes per year, affecting 235,187 workers and entailing the loss of 3,846,296 working days. Finally, from 1919 to 1926 the annual number of strikes was 1,218, affecting an average of 545,538 workers.

During the period as a whole, the average proportion of strikers whose claims were conceded in their entirety was 14 per cent. of the whole number. Forty-nine per cent. accepted a compromise, and the remaining 37 per cent. were unsuccessful. The annual propor-

tion of strikers who met with complete failure was, however, extremely variable. It fell to a minimum of 7 per cent. in 1917, when out of a total of 293,810 strikers only 20,261 were completely unsuccessful in their claims (during the same year 68 per cent accepted a compromise and 25 per cent. were successful). The proportion of unsuccessful claims was highest in 1922, when it reached 74.6 per cent. (during that year only 11.3 per cent. were successful and a compromise was accepted by 14.1 per cent.). Finally, in 1920, the year in which the number of strikers was largest (1,316,559) the proportion of failures was 51.6 per cent. ; 38.6 per cent. of the strikers accepted a compromise, and only 127,888 were entirely successful in their claims.

Information on the chief causes of strikes is available only for the years 1923 and 1924¹, but it seems evident that the majority of these disputes arose in connection with the fixing of wage rates. In 1923, out of a total of 1,068 strikes, 786 were due to a demand for increased wages and 28 to a reduction in wages. In 1924 out of a total of 1,083 strikes, 893 followed on a demand for increased wages and 35 on a reduction.

As regards occasions on which recourse was had to the 1892 Act, the following information may be given for the period from 1893 to 1920. Recourse to the statutory procedure before the occurrence of a stoppage has been comparatively rare. There have been 232 such cases in all, enabling strikes to be averted on 132 occasions. The total number of disputes submitted to conciliation procedure between 1893 and 1920, either before or after the occurrence of a stoppage, was 4,279, which represents an average of 18.53 per cent. of the strikes declared during that period. The proportion was, however, of this order of magnitude only until 1905 (the maximum reached then was 29.64 per cent.) and declined steadily between 1906 and 1915, when it was only 3.06 per cent. (only three cases of recourse to the Act in all). In 1920, the proportion was 10.43 per cent. Out of 4,279 cases of recourse to the Act, about 51 per cent. were due to the initiative of a justice of the peace and over 43 per cent. to that of the workers. The remainder were divided among cases submitted by the employers (2 per cent.) and by both parties at once (4 per cent.). A conciliation committee was formed on 2,568 occasions, and 195 disputes were settled beforehand. Conciliation was refused by the employers 1,279 times and by the workers 81 times. In the remaining cases, both

¹ MINISTÈRE DU TRAVAIL : *Annuaire statistique*, 1927, pp. 129-130.

parties refused conciliation. Finally, out of 2,568 disputes in connection with which conciliation committees were formed between 1893 and 1920, 1,550 were settled by the committees — 1,417 by conciliation and 133 by arbitration.

It is also interesting to note that in addition to these 1,550 disputes settled by conciliation committees, 92 disputes were settled after the meeting of the committee. On the other hand, 195 were settled before the meeting of the committee, and 155 after conciliation had been refused, which brings the total of the disputes settled during this period to 1,991.

Further, a settlement was reached in a certain number of disputes through the intervention of various agents. From 1893 to 1920, there were 1,038 cases of intervention by prefects or sub-prefects, 669 by mayors, 96 by the Minister of Labour and 87 by labour inspectors.

The importance of these cases of outside intervention has moreover tended to increase. Here again information is available only for 1923 and 1924. During 1923 alone, the number of interventions included, among others, 66 on the part of labour inspectors, 41 on the part of prefects and sub-prefects, 25 on the part of mayors and 14 on the part of the Minister of Labour. During the same year, recourse was had to the 1892 Act on 70 occasions, resulting in 15 settlements by conciliation and 3 by arbitration. In 1924, the number of occasions on which labour inspectors intervened was 88, prefects or sub-prefects intervened 56 times, mayors 43 times and the Minister of Labour 9 times. In addition, there were 97 cases of recourse to the Act, leading to 31 settlements by conciliation and 3 by arbitration.

On the basis of the statistical data available it may be concluded that the 1892 Act was never very widely applied, and that its importance has steadily diminished during recent years. This is attributable on the one hand to the fact that recourse to the Act is entirely optional, and on the other to the fact that the machinery provided is essentially local in character. Far from being adequate to avert strikes affecting a whole district or the whole country, the present Act is barely effective to settle even local disputes, if they are of any importance.

It is therefore not surprising that, even after the adoption of the 1892 Act, the question of conciliation and arbitration in labour disputes should have continued to inspire a considerable movement of study and opinion, and that efforts should steadily have been made to find a better practical solution of the problem. Since

1892, about thirty Government Bills and parliamentary proposals have been introduced, all aiming at the improvement of an Act that has proved so ineffective.

In 1924 Mr. Charles Picquenard declared in his Report to the Minister of Labour that the 1892 Act had always been notoriously inadequate and incomplete, and that it no longer corresponded in the slightest degree to the social needs of the present age.

The preamble of the 1929 Bill is drawn up in the same spirit. It states that forty years' experience of the 1892 Act has demonstrated the extent of its inadequacy, which is particularly evident in the cases, now becoming more and more frequent, of general disputes extending to a number of undertakings and affecting a wide district.

Such are the objections raised to the present system. The improvements that should be made in it have been the subject of much discussion on the part both of workers and employers and of theorists.

Here is the opinion expressed in 1922 by Professor G. Scelle in his work on labour law ¹:

Failing the general introduction of compulsory arbitration, what procedure satisfactory at once from the legal and the social standpoints might be adopted for the settlement of collective disputes?

In our opinion, the solution should be looked for in a *logical distinction between different functions*, dictated by sound legal precepts. Judgment should be left to judicial bodies, and regulation to regulation bodies. For all disputes capable of a judicial solution, judicial procedure, compulsory as regards both recourse and the observance of the decision, should be introduced. . . . Neither strike nor lock-out should be tolerated in an organised State, so long as the judge is able to declare *the law*.

If, on the other hand, the dispute turns on the necessity or expediency of modifying or abrogating a rule of law or an actual juridical situation, the parties to the dispute have at their disposal, first, the normal constitutional procedure that enables them to bring their influence to bear on the public authorities competent to pronounce the rule of law, and then the statutory rights that they themselves possess to modify their own regulations as laid down in collective agreements by common consent. Failing agreement, methods of coercion — strikes and lock-outs — would become legitimate. Here, however, permanent institutions whose function is precisely that of preventing recourse to coercion should intervene.

In order to maintain social peace, a good legislative system should set up institutions with the function not of pronouncing judgment, but of laying down *regulations*: mixed or joint bodies intended to persuade the opposing parties to agree on a settlement. Such bodies are, in the first place, works councils, then permanent conciliation committees, easily accessible and functioning on the lines of joint participation, recourse to which might be made compulsory while the adoption of their proposals remained optional.

Finally, and above all, such institutions are permanent research bodies, again of a joint character, consisting of technicians and based on a strong trade organisation, whose labours would be unconnected with any dispute and would consist

¹ G. SCELLE: *Le droit ouvrier*, Part II, § 3, pp. 135 et seq. Paris, Librairie Armand Colin, 1922.

in working out, in relation to the needs of those concerned and to the fluctuations in labour and market conditions, the necessary system for regulating the relations between capital and labour.

Such is the solution proposed by jurists. As regards opinion among the persons concerned, this has undergone certain changes since the beginning of the twentieth century.

Until 1914, the employers' associations were definitely hostile to any more extensive intervention of the law in labour disputes. They strongly disapproved of any provisions for compulsory conciliation proceedings guaranteed by penalties, and especially of the institution of permanent bodies such as works councils. It may be said that even to-day French employers are still opposed to the proposed alterations. Their hostility was particularly evident in respect of the Bill of 1929, against which many objections were raised in employers' circles.

The workers' organisations were in their turn opposed to the extension of legislation concerning conciliation and arbitration in collective labour disputes, because they were afraid that any committees or boards set up by law would diminish the influence of the trade unions, and that a more effective Act might restrict the right to strike. Since the war, however, the opposition of the workers' unions has diminished. Under the influence of the General Confederation of Labour, a certain number of unions now seem prepared to accept the introduction of permanently elected delegations empowered to intervene in labour disputes; but they are opposed to any measure that might tend to limit the right to strike. The Christian unions for their part are much more favourably disposed towards measures intended to facilitate the peaceful settlement of labour disputes. The French Christian Workers' Confederation has announced its approval of the 1929 Bill. In a statement published on 12 March 1929, it declared that "the Government Bill would constitute a definite step forward by making compulsory an exchange of views by means of which disputes might be averted or stopped".

§ 4. — Summary

The system of conciliation and arbitration introduced by the Act of 1892 is entirely optional and not supported by penalties. Conciliation is effected through temporary committees, set up only in the event of a dispute. The justice of the peace of the

"canton" in which the dispute takes place acts as Chairman of the committee. The terms of settlement of the dispute must be unanimously adopted. Should the conciliation proceedings fail, arbitration may be resorted to through the medium of arbitration boards (or even of a single arbitrator) chosen by the parties. If the arbitrators are unable to reach agreement, an umpire is appointed.

This system is somewhat inadequate. From 1893 to 1920 it was resorted to in only 18 per cent. of the disputes, and in less than half of these (8.4 per cent.) was a friendly settlement reached. This proportion has, moreover, decreased during recent years. In 1920, recourse to the Act was had in only 10 per cent. of the strikes that occurred.

A number of Bills have been introduced since the beginning of the twentieth century with the object of improving the present system. The latest is that which was ratified by the Chamber of Deputies on 25 June 1929, but has not yet been passed by the Senate. Under its terms, recourse to arbitration procedure would be compulsory.

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BELGIUM

§ 1. --- Economic Background and Development

Belgium is a Kingdom of 11,755 square miles area, having in 1929 a population exceeding 8 millions. During recent years immigration has exceeded emigration by approximately 10,000 persons annually.

According to the census of 1920, 478,000 persons were employed in agriculture, 1,470,000 in industry, and 570,000 in commerce and transport. A large proportion of the goods produced in Belgium are for the foreign market.

Both workers and employers in Belgium are organised. The chief trade unions are the Trade Union Committee of Belgium, having well over half a million members, the General Federation of Christian Trade Unions, with approximately 180,000 members, and a number of liberal or neutral trade unions with a few thousand members. The chief employers' association is the Central Industrial Committee, founded in 1895, which includes practically the whole of the employing groups in Belgium.

The history of the system of conciliation and arbitration falls into two periods. During the first period, which ended with the Armistice, the Government confined itself to encouraging the development of conciliation and to setting up various joint committees for facilitating it. During the second period, the State took upon itself to exercise a certain measure of constraint upon the parties to have recourse to conciliation, and, in addition, set up more complete machinery than before.

Until the Armistice the Act providing for the prevention and settlement of industrial disputes was that of 16 April 1887. Under this Act joint committees, made up of employers and workers in equal numbers elected for a period of three years, were constituted by districts. In the event of a collective dispute occurring, these committees were convoked by the Government of the province on the request of the employers or workers concerned. Their function was to seek means of conciliation

which would bring the dispute to an end, and, if no agreement were reached, to draw up a report, which was made public.

After the Armistice a number of Royal Decrees and Ministerial Decrees set up chambers of arbitration or of conciliation in a number of different industries, or in some cases for different localities. These committees were composed of a member appointed by the Government, who usually acted as chairman, together with a number of members representing employers and workers in equal numbers.

At the same time provisions concerning the settlement of industrial disputes were introduced into the regulations governing employment relief. If a stoppage of work occurred, the workers affected were held to be entitled to unemployment relief in the event of the employers refusing to go to arbitration when the workers were willing to accept that method. If, on the other hand, the workers refused to go to arbitration, although the employers were willing to take such a course, no unemployment relief was granted. Furthermore, if an arbitration award was given and the workers refused to accept it, again no relief was given to the men thus without employment.

On 1 January 1921, the Unemployment Relief Regulations were rescinded, and a National Emergency Fund was set up by Royal Order. Under this Order emergency allocations were suspended in the event of a strike or lock-out when the workers concerned refused to have recourse to the joint committee competent to deal with the matter, or any other conciliation machinery set up by law, or to accept the proposals advanced by these bodies.

The whole system of conciliation and arbitration was finally set upon what may be regarded as a definitive basis by the Royal Order of 5 May 1926¹. The regulations contained in this Order, as amended by a further Order of 25 November 1929², constitute the system actually in force. It is the outcome of the evolution of the existing procedure, namely, of the institution of conciliation bodies and the application of the provisions regarding unemployment relief as a compulsory measure to induce the parties to have recourse to the conciliation bodies.

¹ *Legislative Series*, 1926, Belg. 5.

² *Ibid.*, 1929, Belg. 7.

§ 2. — The System in Force

The measures in force in Belgium for dealing with the prevention and settlement of collective disputes (Royal Order of 5 May 1926, as amended by Royal Order of 25 November 1929) comprise recourse to conciliation, with penalties attendant upon failure to make use of the machinery provided for this purpose, and optional recourse to arbitration. The penalties provided in the event of either party proving intransigent in the matter of conciliation, based upon the payment or non-payment of unemployment relief, constitute the most interesting and original feature of this system.

Provision is made for the setting up of official conciliation committees in every locality where it is shown that they will be useful. Each committee is made up of a president, one or more vice-presidents, and at least three members representing employers and three members representing workers. The actual composition of each committee is decided by the Minister of Industry, Labour and Social Welfare, the representatives of employers and workers being nominated by the Minister from a list submitted by associations of employers and associations of workers concerned. All members of such committees are appointed for a period of three years, which may be renewed. In addition to the official conciliation committees, employers and workers in an undertaking or group of undertakings may by agreement set up special conciliation committees. The parties to a dispute may likewise agree to submit the dispute to national or regional joint industrial committees instituted by the Government.

In the event of a collective dispute occurring likely to give rise to a strike or lock-out, the party most concerned notifies the president of the appropriate committee. The president, having satisfied himself of the seriousness of the dispute, calls together the committee and invites the parties to the dispute to appear before it. In the meanwhile, the president may proffer his help as a mediator. The official conciliation committee, having heard the interested parties or their representatives, invites them to make proposals with a view to conciliation. If no proposal is made or accepted at the first meeting, a second meeting is called, the committee in the meanwhile having sought a suitable formula. If no agreement is arrived at, the committee

suggests to the parties that they should have recourse to arbitration, offering its own services for this purpose, or inviting them to choose an arbitrator, but pointing out at the same time that there is no compulsion upon them to accept such proposal. Finally, in the event of no agreement being reached, a statement is sent to the Minister of Industry, Labour and Social Welfare. Under the original Order, this statement had to allocate the responsibility for the failure to arrive at a settlement. Under the Order of 25 November 1929, however, it is laid down that, in the event of no responsibility being allocated, such responsibility shall be considered as being shared by the two parties.

Meetings of the conciliation committees are held privately. All decisions are taken by a majority vote ; in the event of a tie the president has a casting vote.

In the event of the strike or lock-out having occurred before any recourse to conciliation and arbitration has been had, the competent committee, on application by one of the parties, immediately notifies the Minister of the strike or lock-out.

Without prejudice to the sanctions provided in sections 15 and 16 (see below) the committee proffers its help to the interested parties with a view to settling the dispute.

The intervention of the committee, however, is justified only if the help it offers is accepted by the parties.

As already noted, the most interesting feature of the Belgian system is the provision made for penalties. These, as laid down in the original Order, read (in part) as follows :

15. If an employer causes a strike by putting into force new conditions of employment or wages which his employees have rejected, before the failure of the attempt at conciliation or of the proposal for arbitration has been established by the competent committee ; if he declares a lock-out of his employees without having previously had recourse to the procedure for conciliation and arbitration ; if he refuses to reply to the summons of the committee, or to carry out the agreement arrived at or the arbitration award ; if the committee expresses its opinion that by his attitude he has rendered conciliation impossible — in such case, those of his employees who belong to an approved unemployment society shall be placed on the same footing as involuntarily unemployed persons, and shall as such be entitled from the first day of the strike to benefit from their unemployment society and grants from the National Emergency Fund, in accordance with the Royal Orders for the organisation of unemployment insurance.

16. If employees cause a lock-out by altering the conditions of work before the failure of the attempt at conciliation or of the proposal for arbitration has been established by the competent committee ; if they declare a strike before the failure of the attempt at conciliation or of the proposal for arbitration has been established by the competent

committee ; if they refuse to attend when summoned by the committee or to carry out the agreement reached by conciliation or the arbitration award ; if the committee expresses its opinion that by their attitude they have rendered conciliation impossible — in such case the organisation representing them shall be excluded from the benefit of section 15 for one year dating from the first day of the strike, unless it proves that the strike was declared without consent or without its support.

The Royal Order of 25 November 1929 made two amendments to these regulations of considerable practical importance. In the first place it laid down that the benefits allocated under section 15 should not be counted in determining the maximum annual allocation provided for by the insurance fund. In the second place it provided that the benefits given by the Unemployment Fund cannot be added to those given by the strike fund except, notably, to make up such difference as may exist between the benefits paid to the unemployed and the benefits paid by the strike fund.

§ 3. — Results and Opinions

The statistics of strikes and lock-outs in Belgium, including the number of workers directly affected and the number of days lost, is shown in the following table :

Year	Stoppages of work	Number of workers directly involved	Time lost in working days
1919	372	164,030	—
1920	517	296,192	—
1921	258	127,293	—
1922	172	85,605	—
1923	168	126,278	—
1924	188	84,447	—
1925	112	81,988	—
1926	140	77,368	—
1927	186	39,873	1,658,836
1928	192	74,707	2,254,424
1929	168	60,557	799,117
1930	93	64,718	781,646
1931	74	23,010	399,037

As in most countries, wage disputes are responsible for a majority of the strikes and lock-outs recorded. In 1929, for instance, 119 out of the 168 stoppages were accounted for by wage disputes.

The results of the system of conciliation and arbitration set up by the Royal Order of 5 May 1926 are of particular interest.

In all, forty official committees have been appointed. These committees up to 30 June 1929 had dealt with 652 disputes, 583 of which concerned wage questions.

Details are available concerning 522 cases. Of these 269 were settled by conciliation, 48 previous to appearance before the committee and 221 with the help of the committee. In 195 cases conciliation failed, in 28 cases the matter was taken to arbitration, in 20 cases the committee in question was declared incompetent, and 10 disputes were classed as having no results.

As regards penalties, the application of section 15 (default on the part of employers) was asked for in 62 cases, and the application of section 16 (default on the part of workers) in 104 cases. In 34 disputes the benefits under section 15 were accorded, and in 27 cases refused. In 70 cases the application of section 16 was accorded, and in 29 cases refused.

In view of the fact that in more than half of the disputes of which the result is on record (269 out of 522) conciliation proceedings were successful, it would seem that the system has, on the whole, proved its value.

Both employers and workers have expressed a number of criticisms of the actual working of the system. The employers have pointed out that, as matters stand, they are not treated on an equality with the workers, since if the employer is judged at fault the workers affected receive allocations from the National Emergency Fund, while if the workers are at fault all that is done is to deprive them for a year of the right to these benefits. Furthermore, it is maintained that by considering workers engaged in a strike or lock-out as involuntarily unemployed public opinion is prejudiced against the employers. A different line of criticism is to the effect that the mechanism of unemployment insurance is upset to a certain extent, since it is here used to indemnify unemployment resultant of deliberate intention, when insurance should only deal with matters of a fortuitous nature.

The workers, on the other hand, maintain that they are at a disadvantage since : (a) benefits granted to persons treated as involuntarily unemployed are usually considerably lower than would be granted as strike benefit (a point since dealt with by the Royal Order of 25 November 1929) ; (b) benefits granted under section 15 are counted in determining the maximum unemployment benefit allowed per annum (this has likewise been altered by the Royal Order of 25 November 1929) ; (c) the management of the unemployment fund is disturbed by making it bear

the expenses resultant of certain stoppages of work : and (d) according to the Belgian Labour Party, the interpretation of the term " strike ", as including not only economic strikes but also political strikes, is detrimental to the interests of the workers.

It is interesting to note, however, that although both parties express certain objections to the system, some of which objections have since been dealt with but certain of which remain, both sides are in general agreement with the principle of conciliation and of the Government's right to encourage recourse to that method.

§ 4. — Summary

The Belgian system is thus essentially one of conciliation, with a certain amount of pressure brought to bear upon the parties to have recourse to the conciliation agencies provided. It is the outcome of an evolution extending over more than forty years, but the most notable features date from the years immediately following 1918. It contains a unique form of penalty, which has the advantage of being applicable to trade unions and employers alike. From the record of cases dealt with, and from the opinions voiced by employers and workers, the system would appear to have achieved a fair measure of success.

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LUXEMBURG

§ 1. — Economic Background and Development

The Statistical Yearbook for 1932 of the Grand Duchy of Luxemburg gives its area as about 2,590 square kilometres. There were some 300,000 inhabitants at the last census (31 December 1930). About 32,000 workers were employed in industry in 1931 and the number of miners and metal workers in the country at that date was 24,000. Mining and the heavy metal trades are, next to agriculture, the most important industries in Luxemburg.

Trade unionism in Luxemburg is still young¹. It is true that between 1864 and 1871 several unions of skilled industrial workers were formed, but a coherent labour movement only came into existence, particularly among the iron and steel workers, at the beginning of the present century, when the influence of German trade unionism began to make itself felt. The movement did not, however, reach notable dimensions until the war. The metal workers' and miners' federations were then founded, and these provided a solid nucleus for the formation of the Trade Union Council, which was established in 1919 by their fusion with the group of Free Unions and the Independent Federation of Railway Employees. The Trade Union Council, which is in close touch with the Socialist Party, is the most considerable workers' organisation in Luxemburg; next comes the Federation of Unions of Salaried Employees; the others are less important bodies. The organisation of employers dates from the war. Large-scale industry held aloof at first, but, under pressure of the trade union movement, it joined the existing employers' federation and then assumed control of it.

There is no special Act on the adjustment of labour disputes in Luxemburg, though a Bill on collective agreements and

¹ Cf. *Freedom of Association*, Vol. II, pp. 265 et seq.

compulsory arbitration, introduced on 14 August 1908, is still before Parliament and has been repeatedly amended. It will be discussed more fully later.

Isolated provisions on the prevention and settlement of industrial disputes are to be found in different Luxemburg Acts, but there is no regular conciliation and arbitration procedure for collective disputes and no special conciliation and arbitration authority. The prevention and settlement of labour disputes, whether individual or collective, is the duty of the representatives of the workers and the management of the undertaking concerned. The idea of trade representation in the form of technical, advisory and central committees and works councils is to a great extent realised in Luxemburg; and the part these bodies play in the settlement of disputes justifies a brief description of them.

§ 2. — The System in Force

The representation of labour in the works is based on the Grand Ducal Order of 8 May 1925¹. A permanent works council (principal council) must be instituted in every industrial establishment employing regularly at least 20 workers. These councils are competent to deal with questions concerning contracts of employment, health and safety arrangements, wages and other conditions of employment, and their work consists in furthering co-operation between employers and workers by settling matters affecting both parties in accordance with the law. If, for instance, a worker is dismissed without notice, the reasons must be reported to the works' council, which must also be informed in advance if alterations are to be introduced in the undertaking that will entail any considerable reduction of staff. Disputes between workers and their foremen may also be submitted to the council, but not until they have been laid before the tribunals provided for in the rules of employment.

Salaried employees are represented by committees. The Act of 31 October 1919² provides that a committee of salaried employees shall be established in every undertaking in which at least 15 salaried employees are regularly employed. Its duties

¹ *Legislative Series*, 1925, Lux. 1.

² *Ibid.*, 1920, Lux. 2-4.

are, among others, to protect the interests of the employees and to settle disputes between employers and employees by way of conciliation (section 25).

Mention should also be made in this connection of the workers' councils set up on the Luxemburg railways in accordance with the Grand Ducal Order of 14 May 1921, which established a system of direct and indirect representation. Delegates are nominated by each grade of workers in each department of the service, and every three months these communicate to the departmental management the proposals and wishes of the employees in respect of the local organisation of work, hygiene, accident prevention, and any other questions affecting the department, to the exclusion of general questions. These departmental representatives elect a delegation to the general management, whose principal duties are to give advice on the rules of employment in so far as they effect the interests of the staff, and to mediate between the staff and the management in disputes on general questions.

Lastly, Luxemburg legislation provides for arbitration for salaried employees and railwaymen.

Section 26 of the Act of 31 October 1919 respecting the legal regulation of the contract of service of private employees¹ provides that all disputes respecting relations between employers and workers shall be settled by an arbitration court. The court is thus competent to deal with disputes which may arise, not only out of contractual relations of any sort, but out of any non-contractual legal relationship. It is thus a labour tribunal set up to give decisions on individual or collective disputes concerning the relations of the parties in respect of employment. Section 62 of the Luxemburg Railway Staff Regulations makes the arbitration courts established under the Act of 1919 competent in the following additional circumstances. If the time taken up by a railwayman in performing the duties of member of a staff committee or assessor of an arbitration court, exercising his civic rights and duties, or carrying out the duties imposed by Acts, Orders or Government Instructions, appears to be too long, the management may require the matter to be submitted to an arbitration court, which may authorise a reduction of the wages, or the dismissal, of the employee concerned. The arbitration court is also competent to deal with all other disputes concerning the respective obligations of the management and staff of the railways, unless the staff regulations provide otherwise. It thus deals with all the

¹ *Legislative Series*, 1920, Lux. 2-4.

above-mentioned disputes except those concerned with promotion, disciplinary measures, and the deletion of employees from the staff register ¹.

§ 3. — Proposed Legislation

As was mentioned above, an Act on collective agreements, dealing also with collective labour disputes, has been under consideration since 1908. A second draft came before Parliament in 1917, and the most recent was discussed by the Council of State in 1927 ². The title then proposed for the new Act was "Act respecting collective labour agreements, occupational organisations and arbitration in case of social dispute". Collective labour disputes are dealt with by the Council in Part V, sections 17-19 of its draft (heading "Conciliation Committees"). Here, the principal works council retains the function of preventing and settling collective labour disputes. Section 17 provides that as soon as a collective dispute breaks out in an undertaking, the works council shall attempt a settlement by way of conciliation before a strike or lock-out is declared or notice to terminate the collective agreement is given, and with this object shall apply in writing for an interview with the manager of the undertaking. The latter must comply either personally or through a representative, not more than twenty-four hours after receipt of the application. If there is no works council, the three senior workers have its powers. If the parties cannot arrive at an agreement, either may apply without formality to the magistrate to act as mediator. Within 48 hours of receiving such a request, the magistrate must summon the parties to act as a conciliation committee and fix a place and date for the proceedings. If the parties come to an agreement before the magistrate, he records the fact in a minute, which the assessors sign. The minute is equivalent to a collective agreement, and in composing it the magistrate is required to take the regulations for the conclusion of such agreements into

¹ According to sections 28 and 29 of the Grand Ducal Order of 14 May 1921 approving the Luxembourg Railway Staff Regulations, promotion is dealt with by the management after consulting the central staff committee. Sections 34 and 35 provide that the management is competent to take disciplinary measures, punishments being proposed either by the immediate superior of the employee concerned or, in cases of particular gravity, by a committee of enquiry. The management is also competent to delete employees from the staff register (section 35).

² The Council of State, which has 15 members, is nominated by the Crown; it is required to give its opinion on every draft Bill, and may return to Parliament for further deliberation Bills which the latter has adopted.

account. If the parties do not come to an agreement before the magistrate, the magistrate may either adjourn the sitting or instruct the parties to nominate either one joint arbitrator, or one or more arbitrators each. If the latter course is taken and the arbitrators do not agree on the settlement of the dispute, they may nominate an umpire; if they cannot agree on his identity, he is appointed without formality, on joint application by the parties, by the president of the civil court of the district. Decisions are made by a majority vote, and are not subject to appeal. If neither an agreement by conciliation nor by arbitration can be arrived at, the magistrate records the fact in a minute and posts it on the door of the court. If inaction by the parties leads to a strike, the magistrate summons the employer or his representative and the works council to sit as a conciliation committee, in which the procedure is as above described.

The clause of the 1917 draft, by which a collective agreement could be brought into existence even though only one party accepted its stipulations, did not appear in the Council of State's draft, which also omitted the provision that collective agreements, in order to be valid, must empower an arbitration court to issue decisions binding on the parties. This would have meant the introduction of compulsory collective agreements and compulsory arbitration. The Council of State declared in its reports on the drafts of 1908, 1917 and 1927 that it could not accept these otherwise praiseworthy attempts to prevent industrial disputes at any cost; a collective agreement could help to improve relations between employers and workers only if concluded by them as free contracting parties in full realisation of their economic strength and moral responsibility. Apart from a few unforeseen cases, breaches of collective agreements were very rare; but if the parties refused to submit their dispute to conciliation, neither a mediating factory inspector nor a compulsorily formed arbitration court was capable of finding a just and permanent settlement.

Time will show whether and in what form the Bill will be adopted.

§ 4. — Statistics

The following table gives information concerning the labour conflicts (strikes and lock-outs) which occurred between 1918 and 1930. Only between 1918 and 1920, a time of particularly

unsettled political conditions, was the number large. From 1924 to 1930 no strike, and from 1921 to 1930 no lock-out, was notified to the competent authority.

STRIKES AND LOCK-OUTS

Year	Number			Results		
	Strikes or lock-outs	Striking or locked- out workers	Working days lost	Success for workers	Compro- mise	Success for employers
	(a) <i>Strikes</i>					
1918 . .	8	668	30	5	1	2
1919 . .	14	1,623	150	1	9	4
1920 . .	12	908	165	7	1	4
1921 . .	2	17,038	19	—	—	2
1923 . .	1	20	13	1	—	—
	(b) <i>Lock-outs</i>					
1918 . .	1	115	5 months from 18 Dec.	—	—	1
1920 . .	1	300	3 months from 14 August	—	1	—

NETHERLANDS

§ 1. — Economic Background and Development

The Netherlands have an area of 34,225 square kilometres and had some 7,920,000 inhabitants on 31 December 1930, the rural population amounting to about 53 per cent. of this total.

The principal national interests are connected with commerce and shipping, but there is also an export trade in agricultural products, particularly butter and cheese.

At the census of 1920 some 35 per cent. of the total population (that is, more than 2,720,000 persons) was described as active, and this number was distributed over the principal occupational groups as follows: industry, 36 per cent.; agriculture, 25 per cent.; commerce and communications, 18 per cent. Less than 1 per cent. of the active population (that is, some 18,000) was engaged in the fishing trade.

In 1927 the number of undertakings in the various industries was as follows: 3,152 tobacco factories, 295 distilleries, 190 breweries and a certain number of beet sugar factories and refineries. The textile, wood, rubber, heavy metal, shipbuilding and engineering industries are also of some importance.

There are in the Netherlands several types of occupational organisations, both of employers and of workers, professing various shades of political and religious opinion.

The workers' unions are organised either in local groups or in national federations, the most important of which are the Netherlands Federation of Trade Unions (*Nederlandsch Verbond van Vakverenigingen*), which counted 217,400 members on 1 January 1929, and the Roman Catholic Workers' Federation (*Roomsche-Katholiek Werkliedenverbond in Nederland*), whose membership at the same date was 110,400¹. Local groups and

¹ Cf. *Maandschrift van het Central Bureau voor de Statistiek*, 31 Dec. 1929, p. 1780. Cf. also *Freedom of Association*, Vol. II, p. 291.

national federations are composed both of local and of national unions.

The principal employers' associations are the Federation of Netherlands' Employers (*Verbond van Nederlandsche Werkgevers*), founded as long ago as 1899, the Central Council of Employers' Unions for Labour Questions (*Centraal Overleg in Arbeidszakeu voor Werkgeversbonden*), the General Association of Catholic Employers (*Algemeene Roomsche-Katholiek Werkgeversvereniging*) and the Roman Catholic Federation of Employers' Associations (*Roomsche-Katholiek Verbond van Werkgeversvakverenigingen*), the two last named, as their titles imply, being Catholic organisations.

The example given by other countries, in particular Great Britain, and the desire to improve the relations between employers and workers induced certain prominent persons in the Netherlands to draw attention about 1880 to the necessity of facilitating the peaceful settlement of labour disputes.

In 1887 a private conciliation and arbitration committee, comprising employers, workers and an impartial chairman, was set up to deal with any disputes which might arise in three factories in Delft.

Interest in the question increased when the first great strike broke out in the Netherlands in 1888 and the efforts to submit the dispute to arbitration broke down.

The need for a Government institution for the settlement of labour disputes then began to make itself felt. The question was discussed at a Social Congress held in Amsterdam in 1891, and there was a unanimous decision in favour of the creation of regional Labour Courts composed of representatives of employers and workers and required to keep the Government informed of events, to attempt conciliation in disputes and to arbitrate at the request of the parties.

During the next year (1892) two Bills providing for the creation of bodies of this sort were introduced into the Lower House of the States-General ; both were rejected, but the Government then came forward with a Bill which, though not without amendment, became the Labour Courts Act of 2 May 1897¹. This empowered the Government to set up labour courts in such districts and for such industries as seemed to require them ; the courts were to collect evidence on disputes, give both the competent authorities and the parties the benefit of its advice and ensure the settlement

¹ *Staatsblad*, 1897, No. 141.

of disputes either by intervening themselves, or by nominating conciliation committees comprising an equal number of employers and workers, or again by submitting cases to arbitration with the consent of the parties.

The courts were composed of an equal number of employers' and workers' representatives, chosen by them, and each court nominated a committee, comprising a chairman, chosen alternatively from among the employers and the workers, and two other members.

The first courts were set up in April 1898, and 112 in all were subsequently established, of which 12 were at Amsterdam, 11 at Rotterdam, 7 at The Hague and 6 at Utrecht.

Principally owing to their restricted local competence, the courts were not as successful as had been hoped. Very few disputes were brought before them, and their efforts to combine in a federation failed through lack of Government support. Further, having no right either to make enquiries or to enforce their decisions, they were almost powerless ; and when the Act of 14 December 1922 abolished them, they disappeared almost unnoticed and quite unregretted.

However, the increase in the number of collective labour conflicts made it obvious that a new body capable of settling them must be created. To this end a Government Bill on " the peaceful settlement of disputes respecting the conditions of employment and the prevention of such disputes " was introduced into the Lower House in 1920. It was adopted after amendment, and, having also survived vigorous opposition in the Upper House, it became law on 4 May 1923 ¹.

§ 2. — The System in Force

The Labour Disputes Act of 4 May 1923 introduced into the country not only a system of State conciliation and arbitration, but also a special enquiry procedure for particularly important cases.

Besides this voluntary official machinery, permanent or *ad hoc* arbitration committees may be set up by collective agreements ; and in 1929 stipulations to this effect were contained in some

80 per cent. of all collective agreements concluded, permanent committees being provided for in more than one-third of these. When such procedure has been provided for in an agreement, it has precedence over the official machinery.

CONCILIATION

The principal characteristic of the Labour Disputes Act is the creation of permanent Government conciliators to carry on operations, with the aid of the necessary staff, in every district in the kingdom and in every specified industry. If a dispute covers more than one district or industry, it is the duty of the Minister responsible for the administration of the Act to designate the Government conciliator to intervene in the dispute.

Government conciliators are appointed, suspended and dismissed by the Crown. A report of their operations is presented annually to the States-General.

The duty of Government conciliators is to further the peaceful settlement of disputes respecting conditions of employment and to prevent such disputes. With these objects in view, they may either assist employers and workers in the conclusion of agreements relating to employment, or recommend the parties to a dispute to apply for the intervention of a conciliation board, or of a special conciliator, or for arbitration.

A conciliation board is nominated by the Government conciliator in agreement with the parties, and consists of a chairman and two or more members. The Government conciliator may act as chairman of this board or as special conciliator if so requested by the parties.

A secretary is attached to the conciliation board or special conciliator.

The Government conciliator may intervene in a dispute in the following conditions : first of all, if in any commune a dispute breaks out which will probably produce or has produced a strike or lock-out by which not less than fifty workers are affected, the mayor should notify the Government conciliator thereof as quickly as possible, and at the same time furnish such useful information as he can. Secondly, the intervention of the Government conciliator may be claimed by the parties to a dispute which has produced or will probably produce a strike or lock-out ; and if the Government conciliator is informed by these or any other means of the existence of such a dispute, and considers it of sufficient impor-

tance for his intervention, he should open communications with the parties.

On the other hand, he should refrain from intervention or from continued intervention in certain cases enumerated by the Act, particularly if he considers that the dispute is not within his competence.

Having decided to intervene in a dispute, the Government conciliator may require the parties to appear before him and give information respecting it ; every person so summoned is bound, on pain of a fine, to appear in person or to be represented unless prevented by legitimate causes.

The Government conciliator may also, if he considers it desirable, recommend the parties to apply for the intervention of a conciliation board or of a special conciliator as provided by the Act. He then sets up such a board or appoints such a conciliator in accordance with their reply.

Records of any agreement arrived at between the Government conciliator and the parties in connection either with procedure or with the settlement of the dispute by the conciliation board or special conciliator are kept in the form of minutes.

The conciliation board once set up, or the special conciliator when designated, may, with the approval of the Government conciliator, require the appearance before it of either party, of officials of trade associations belonging to either party, and of witnesses and experts ; such persons are also bound to appear on pain of a fine, unless prevented by legitimate causes.

The persons who appear are then examined, after which each of the parties is given facilities for making a further statement concerning the dispute.

Further, the conciliation board or special conciliator may, with the approval of the Government conciliator, require experts to institute an enquiry, which forms part of the conciliation procedure and should not be confused with the special enquiry procedure instituted by the Act. The latter will be dealt with subsequently.

When the circumstances of a dispute have been elucidated, an attempt at conciliation between the parties is made. If a settlement is arrived at, a minute to that effect is drawn up. If the conciliation proceedings are unsuccessful, and if the parties do not undertake to submit the dispute to an arbitration court, an absolute majority of the conciliation board, or the special conciliator, may give its opinion respecting all the points in the

dispute and all the means of settling the dispute, which is then communicated to the parties. If they accept it, a minute to that effect is drawn up ; if not, the board or special conciliator may publish part or all of its " opinion ".

ARBITRATION

The Act lays down that the settlement of labour disputes may also be entrusted to arbitration courts or arbitrators. The Government conciliator may not act as arbitrator or member of an arbitration court, but his co-operation is required throughout the proceedings. A secretary appointed by the Government conciliator in agreement with the arbitration court or arbitrator shall be attached to the latter. A person designated as arbitrator or member of an arbitration court may refuse such duties. He may also be challenged on the application of either party. The Act lays down procedure for challenge and the appointment of new arbitrators.

The arbitration court meets as often as its chairman considers necessary, and its awards may not be formulated unless all the members are present. All decisions are adopted by an absolute majority of the votes cast, the chairman having the casting vote. No abstention from voting is permitted.

Arbitration proceedings may be instituted either directly or after the failure of an attempt at conciliation. In either case, parties desiring to submit a dispute to arbitration are required to apply in writing to the Government conciliator. The latter should refuse to co-operate if the dispute is not within his competence, if it is not important enough to justify arbitration, if the application is not made by or on behalf of a sufficiently large proportion of the persons concerned in the dispute, or if proceedings in the case have been opened before a conciliation board and each time that the proceedings have been successful.

In all other cases the conciliator draws up a minute, to be signed by the parties, containing their pledge to submit the dispute to arbitration and certain essential particulars concerning themselves or their representatives, the nomination of the arbitrator or chairman and members of the arbitration court, and the duration and validity of the award.

The arbitration court when constituted, or the arbitrator when designated may, with the approval of the Government conciliator, require the appearance before it of the representatives

of the parties, as given in the minute mentioned, and of witnesses and experts. As far as the summoning and examination of these persons and the hearing of the parties are concerned, the provisions of the Act are identical with those governing the conciliation procedure. The same right to make enquiries is provided for, but there is an added regulation permitting the state conciliator to proceed, in the presence of the arbitration court or arbitrator, to a further examination of such persons, on oath if need be, if he considers it necessary for the information of the court. On the application of the arbitration court or arbitrator, the Government conciliator may also require the submission of books and all other requisite documents.

Government conciliators, arbitrators and the chairmen and other members of the various bodies set up by the Act are bound, on pain of imprisonment or fines, to keep secret all matters which become known to them from such books and documents or through other exercise of their functions.

The secretary keeps minutes of all proceedings of the arbitration court or arbitrator ; they are signed by the chairman or arbitrator and by the secretary.

When the circumstances of the case have been fully elucidated, the arbitration court or arbitrator issues an award in conformity with the Act, and this, together with the minutes of the proceedings, is forwarded to the Government conciliator by the secretary within three days of the award.

The Minister responsible for the administration of the Act may, if advisable, cancel an arbitration award and order the court or arbitrator to issue another. He may also require a court arbitrator to revise an arbitration award. Neither cancellation nor revision has retroactive force.

Arbitration awards are considered as equivalent to collective agreements. The members of the occupational organisations in whose names the minutes drawn up with a view to arbitration were signed have the same legal status as the parties.

ENQUIRIES

The Act provides for a third and separate type of procedure. If a dispute seriously affecting public interests will probably cause or has caused a strike or lock-out, and if not less than 300 workers are affected by it, the competent Minister may appoint a committee to institute an enquiry upon the dispute in question. The Minister

nominates its chairman and secretary, and may lay down rules of procedure if he considers it necessary to do so.

All decisions are published by the *Nederlandsche Staatscourant*.

The enquiry covers the circumstances of the dispute and the extent to which the claims of either party can be granted. The committee has power to summon as witnesses or experts any persons whom it considers it necessary to hear for its information; it may also require the submission, within a specified time limit, of the books and other documents required.

The committee subsequently reports to the competent Minister on the enquiry made by it; the latter may then publish the conclusions, but the report itself may not be published without the agreement of the persons concerned or their occupational organisations.

§ 3. — Results and Opinions

The following were the numbers of labour conflicts (strikes and lock-outs), workers affected, and working days lost during the years 1920-1930¹:

Years	Strikes and lock-outs	Workers affected	Working days lost
1920	481	66,464	2,354,870
1921	299	47,729	1,281,750
1922	325	43,982	1,223,920
1923	289	56,394	1,216,400
1924	239	27,091	3,156,010
1925	262	31,695	780,860
1926	212	9,051	281,270
1927	230	12,190	203,900
1928	205	13,630	637,600
1929	226	17,170	984,100
1930	212	9,760	273,000

Information on the results of the strikes, the principal demands made by the strikers, and the means by which the conflicts were settled are also available. These data, however, do not cover all the conflicts tabulated above, for neither lock-outs nor certain strikes for which the corresponding information could not be obtained are dealt with.

¹ NETHERLANDS CENTRAL STATISTICS OFFICE: *Strike and Lock-out Statistics, 1924-1930*.

The ratio between failure, success and compromise, calculated on the basis of the number of strikes and on the number of strikers, was as follows : in 1924, 29 per cent. of the strikes ended in success, and 29 per cent. in failure ; 12 per cent. of the strikers took part in the successful strikes, and 24 per cent. in those which failed. Only 43 per cent. of the strikes ended in compromise, but these strikes affected 64 per cent. of the strikers. The results for the following years show a similar divergence between the percentages based on the number of strikes and those based on the number of strikers ; in 1929, for instance, 20 per cent. of the strikes, affecting 11 per cent. only of the strikers, ended in failure, while 29 per cent. of the strikes, affecting 6 per cent. of the strikers, were successful ; compromises were arrived at in some 50 per cent. of the strikes but these affected as many as 82 per cent. of the strikers.

The principal demands of the strikers appear to have been connected with wages ; in fact this question played a part in more than 50 per cent. of the strikes in each of the years dealt with, and a demand for higher wages was the sole cause of dispute in some 25 or 30 per cent. The other claims were concerned chiefly with contracts of employment (10-15 per cent.) and hours of work (5-10 per cent.).

A review of the means by which the strikes were terminated shows that the occupational organisations were the most efficient mediators ; the minimum number of strikes settled by them was 47 per cent. (1928), and the maximum 57 per cent. (1929) the number of strikers affected being even larger (from 49 per cent. in 1926 to 77 per cent. in 1929) ; the proportion settled by direct negotiation between the parties ranged from 14 per cent. in 1925 and 1927 to 8 per cent. in 1929, but these conflicts affected as a rule a small number of strikers only (4 per cent. in 1929). The mediation of third parties was successful in only 4 per cent. of the strikes (affecting 2 per cent. of the strikers) in 1925, but seems to have increased somewhat in importance, for in 1928 the corresponding figures were 7 per cent. of the strikes and 25 per cent. of the strikers. Arbitration plays a very minor part. It brought about the settlement of 4 per cent. of the strikes (1 per cent. of the strikers) in 1924, $\frac{1}{2}$ per cent. of the strikes ($\frac{1}{2}$ per cent. of the strikers) in 1926, and $\frac{1}{2}$ per cent. of the strikes (1 per cent. of the strikers) in 1929.

The Government conciliators were responsible for the termination of only 3 to 4 per cent. of the strikes during the years

1924-1929 ; but they seem to have had more success in the later years, for the number of strikers concerned in conciliation brought about by them increased from 3 per cent. in 1925 to 35 per cent. in 1929.

In all, Government conciliators had notice of some 400 disputes during the five years 1924-1928 inclusive¹ ; they attempted conciliation in 184 cases, and may claim that their intervention was successful in 67. In 31 cases the effect of this intervention on the termination of the conflict was doubtful, while in the 85 others the official attempt at conciliation must be described as unsuccessful.

Mr. A. C. Josephus Jitta, Secretary to the Government Conciliation Committee at The Hague, has published a study on the Working of the Labour Disputes Act, which gives some interesting information on the subject.

The Act prescribes that Government conciliators may be appealed to for the *prevention* and the *settlement* of labour disputes. The exercise of the former function, which consists in aiding parties, at their request, in the drafting of collective agreements before any question of a strike or lock-out has arisen, was only called for on eight occasions in five years ; but the author considers that such appeals may grow more frequent when the Act is better known and its utilisation has become habitual.

With regard to mediation proper, there had, up to 1928, been only one case of an enquiry which included an examination of books, and the author believes that for practical reasons this facility will not be frequently used. The possibility of industrial secrets being revealed is an obstacle, and, further, books can only supply information on the past, while the settlement of conflicts depends on future developments.

There have been only two cases of arbitration during the five years.

Conciliation has thus been the only common procedure, though a conciliation board such as the Act prescribes has never yet been set up ; in most cases the Government conciliator has acted as special conciliator at the request of the parties.

Mr. Jitta explains the system introduced into the Netherlands by the Act, and emphasises its fundamentally optional character. With a few exceptions, the working of the Act is based on the

¹ A. C. Josephus JITTA : " De Practijk van de Arbeitsgeschillenwet ", summarised in the *Royal Belgian Labour Review* for Dec. 1929, pp. 1796 et seq.

voluntary collaboration of the parties. Compulsory provisions (prohibition of strikes before the Government conciliator has dealt with a dispute, the obligation to accept the latter's decision, etc.), such as appear in the systems of other countries, would not be in harmony with that of the Netherlands.

On the other hand, the author mentions on several occasions the necessity for preventing labour conflicts and the efficacy of the Act in this respect ; the following of his observations may be noted.

The average annual loss of working time, which amounted to more than a million days from 1919 to 1925, has fallen since the latter date to several hundred thousand ; this progress is due partly to the improvement in economic conditions, but also in all probability to the influence of the Labour Disputes Act. The figures quoted in the annual reports tend at least to show that in about one-third of the conflicts in which the Government conciliator intervened a comparatively rapid termination was the result.

It is true that in a large number of cases such intervention has been unsuccessful, but in any case the annual expenditure of 11,000 to 16,000 florins entailed by the administration of the Act up to 1928 is fully justified by the results obtained ; a single conflict — the biggest, it is true, which has arisen since the introduction of the Act — cost more than 100,000 florins per day ; and if such waste can be diminished, even for the shortest period, the annual cost of the State machinery will be paid for over and over again.

§ 4. — Summary

The procedure instituted by the Netherlands Labour Disputes Act is essentially optional. When the Government conciliator is informed of a dispute, he can do no more than collect information concerning it, and suggest to the parties its submission to conciliation or arbitration.

In order to deal with a case, a board or special conciliator has to be nominated, and the decision then arrived at can in no way be imposed on the parties ; if the effort at conciliation fails and the parties do not agree to submit the dispute to arbitration, the publication of the decision is the only step which can be taken.

Arbitration proceedings take place before an arbitration court or an arbitrator; the period of validity of the award is decided by the parties.

Lastly, provision is made for a special enquiry procedure in the case of disputes which affect the public interest to a large degree and which cannot be settled by conciliation or arbitration. The competent Minister may give instructions *ex officio* that this procedure be opened and appoint a special committee for the purpose. After the enquiry has been carried out, the committee reports on it to the Minister, who may publish the conclusions made.

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SWITZERLAND¹

§ 1. — Introduction

GENERAL MACHINERY OF GOVERNMENT

Switzerland as a Federal State exhibits the characteristic features of all federal systems of government. The functions of government are divided between a central authority and a number of autonomous State Governments (22 Cantons, of which three are subdivided into demi-Cantons). In other words, the central authority and the State authorities exist side by side within the same area of government. The respective powers of the Federal and cantonal authorities are defined by the Federal Constitution. The underlying principle is that any matter not placed by the Federal Constitution within the jurisdiction of the Confederation falls within that of the Cantons. Moreover, the jurisdiction of the Cantons normally extends also to matters which, in virtue of the Constitution, fall within that of the Confederation if the latter has not yet exercised its authority.

In virtue of the provisions of existing constitutional law relating to the distribution of sovereignty, three spheres of Government may be distinguished.

As regards a certain number of subjects the Confederation is alone competent, both to enact the substantive rules and to carry them out and apply them. Such subjects are, for example, foreign relations, customs regulations, etc.

With regard to other subjects the Confederation enacts the whole or part of substantive law, but leaves the Cantons to take any administrative action needed. This class of subject includes the Factory Acts since 1874 and industrial legislation since 1908. In a third sphere of government the Cantons have virtually retained their sovereignty both over legislation and over administration, for example in the matter of taxation.

¹ This contribution has been compiled by the Swiss Federal Office of Industry, Commerce and Labour.

As already mentioned, industrial and factory legislation, and therefore provisions regarding conciliation and arbitration, fall at present under the second heading, in other words, the substantive law is enacted by the Confederation and applied by the Cantons. It should be noted, however, that so far the Confederation has made only a limited use of its legislative powers, confining itself to the partial regulation of conciliation and arbitration procedure in factories, so that to-day the Cantons are still to a large extent competent in the matter of conciliation and arbitration.

HISTORY OF CONCILIATION AND ARBITRATION.

During the last ten years of the nineteenth century the need arose in Switzerland, as in most other industrial States, for Government intervention in regard to one aspect of the struggle between employers and workers, namely, collective labour disputes. A first discussion on this matter took place in the Federal Parliament in 1891. In the debates the Federal Council took the view that mediation procedure should be regulated by cantonal legislation. At the same time it approved the guiding principle that, while Government intervention in disputes between the two sides might be necessary, the authorities should not intervene with binding effect in the controversy, their task being rather to facilitate a mutual understanding by acting as mediators.

The first Cantons which during the ensuing period took up the question of the regulation of conciliation and arbitration procedure, believed that a feasible way of organising official mediation was to confer these functions upon the industrial courts, or, as they were generally called, the industrial arbitration courts. These are judicial organs composed of experts, whose principal duty is the settlement of civil disputes arising out of the provisions of contracts of employment, by means of a prompt, straightforward and inexpensive judicial procedure. The first Canton to adopt this system of official mediation was Lucerne and its example was followed during the next few years by Berne, Geneva, Fribourg, and Aargau. In this connection it should be noted that Geneva even then made it compulsory for the parties to notify disputes, appear before the Courts and take part in the proceedings, while Aargau enacted that the conciliation boards should intervene *ex officio*.

The policy of investing one body with the double function of pronouncing judicial decisions based on objective legal principles

and mediating in collective labour disputes did not, however, prove successful. No doubt the idea underlying this policy, that a thorough knowledge of labour law is a necessary preliminary condition for successful mediation, was sound in itself. But the nature of the two functions and the procedure which has to be adopted are so essentially different that before long, in spite of some favourable results, the experience gained caused the method to be abandoned.

The first endeavour to set up an independent conciliation board was made in Zurich in 1892. The authorities brought forward a Bill for the voluntary establishment of trade union chambers. These chambers were to set up mediation boards which, at the request of both parties, were to institute conciliation proceedings. The Bill, however, failed to be carried by Parliament and was dropped. But in the industrial centres of Zurich and Winterthur, the need for conciliation machinery was so pressing that the two towns endeavoured to solve the problem without having recourse to cantonal legislation and set up municipal conciliation boards. Thus the Zürich municipality established in 1895 a permanent joint conciliation board, which, however, did not prove generally satisfactory and was therefore replaced in 1906 by an entirely neutral but again permanent board. The main features of the procedure established were : compulsory notification of disputes by the parties, separate conciliation and arbitration procedure, and publication of the grounds on which a party failed to appear before the Board or to accept an arbitration award.

Several other Cantons followed the example of the Zurich municipality in separating the official conciliation and arbitration machinery from the industrial courts. The first was Basle-Town, which in 1897 enacted legislation providing for a conciliation board, not, however, as a permanent body, but as one set up *ad hoc* by the State Council¹. In 1911 Basle-Town amended this Act by one still in force, which re-organised the existing conciliation machinery and established a permanent official conciliation board. Other Cantons to be mentioned in this connection are St. Gallen, which imitated the Basle Act of 1897, and Neuchâtel, Vaud and Berne. The Berne Act of 1908, with some modifications necessitated by the introduction of the Federal Factory Act, is still in force. The Cantons of Schaffhausen and Graubünden

¹ The State of Council (*Regierungsrat*, *Staatsrat* or *Kleiner Rat*) is the highest executive cantonal authority.

decided against the establishment of independent conciliation and arbitration machinery, the latter Canton entrusting the conciliation of disputes to the State Council, and the former to the industrial board, a committee of experts set up to assist the authorities in investigating and recommending on important industrial questions.

A measure passed by the Canton of Geneva in 1900-1904 deserves special mention. This is the *Loi fixant le mode d'établissement des tarifs d'usage entre ouvriers et patrons et réglant les conflits relatifs aux conditions de leurs engagements*, which entrusts conciliation to the State Council and arbitration to a central board composed of members of the industrial courts. The distinctive feature of the Geneva Act is that it not only related to disputes which had already arisen, but endeavoured in the first place to prevent them from arising. The method adopted to achieve this end was to enunciate the principle that wages and other working conditions were determined by contract, or failing this in accordance with custom. For the purposes of the Act, the term custom included collective agreements concluded before the conciliation board or made binding by an award of the arbitration board. In case of failure to reach an agreement between the parties by conciliation therefore, the arbitration board was competent to fix working conditions that were binding on the parties. This example was not, however, followed elsewhere, partly because the results of the system proved to be disappointing, and also because it was open to doubt whether the Geneva Act was in conformity with Federal law.

Generally speaking, before the war official conciliation and arbitration machinery had not yet emerged from the experimental stage, and in 1914 its organisation in the Cantons illustrated the various stages of development through which have passed State conciliation and arbitration generally. Some of the Cantons, in which the need for such machinery was not particularly urgent, had enacted no special regulations respecting conciliation, and as in consequence no special bodies had been established for the purpose, the cantonal Government had to act as mediator in the more important disputes. When the need for the establishment of conciliation and arbitration machinery was recognised, the first step taken in this direction was to confer mediatory functions on the industrial courts. In some cases the courts were simply instructed to carry out these functions, in others provisions were enacted laying down special conciliation procedure. When sub-

sequent experience proved that the industrial courts were not equal to carrying out the new duties, the method was tried of entrusting mediation to existing administrative authorities, and finally of creating special conciliation boards, which were sometimes *ad hoc* and sometimes permanent bodies.

Moreover, in the course of this process a tendency can be discerned towards State mediation in the form of arbitration as well as conciliation, the Canton of Geneva proceeding furthest in this direction by separating its conciliation machinery entirely from its arbitration board and making the decisions of the latter body binding.

The present stage in the evolution of conciliation machinery was reached with the passing of the Federal Factory Act of 1914, which provided a basis for and reorganised the official system of conciliation and arbitration.

§ 2. — The System in Force

Conciliation and arbitration procedure in Switzerland is regulated partly by Federal law, i.e. by sections 30-35 of the *Federal Act respecting work in factories of 18 June 1914* (hereinafter referred to as the Factory Act) and partly by cantonal law. A twofold distinction may be drawn between the spheres of Federal and of cantonal legislation respectively. In the first place, the Factory Act applies only to industrial undertakings as defined by it, while in all other fields (trade, handicrafts, etc.) the regulation of conciliation and arbitration procedure is left entirely to the Cantons. Secondly, Federal legislation does not establish detailed regulations for the settlement of so-called factory disputes, but merely prescribes that the Cantons are to establish permanent conciliation boards, and lays down a few guiding principles which constitute the minimum provisions to be enacted by the Cantons. All other matters, such as the organisation of the conciliation boards, the detailed rules concerning procedure, etc., lie within the competence of the Cantons which regulate them as they see fit in accordance with their special requirements.

Sections 30-35 of the Factory Act came into force on 1 April 1918, and are worded as follows :

30. For the amicable settlement of collective disputes between factory owners and workers concerning conditions of employment or concerning the interpretation and execution of collective or normal

contracts of employment¹, the Cantons shall establish permanent conciliation boards, bearing in mind the requirements of the various industries.

The organisation of the cantonal conciliation boards shall be subject to the approval of the Federal Council.

31. The conciliation boards shall intervene *ex officio* or upon request of a public authority or of the interested parties.

Any person subpoenaed by a board shall be compelled, under penalty of a fine, to appear, to take part in the proceedings, and to give all necessary information.

The procedure shall be free of charge.

32. Should a dispute extend beyond the limits of the Canton, the Federal Council shall nominate the conciliation board. The Federal Council shall also be entitled to appoint a cantonal board to intervene.

33. Should a number of factory owners in the same industry and their workers voluntarily appoint a conciliation board, the latter shall, as far as they are concerned, replace the official board.

34. The parties shall have the right in every case to empower the conciliation board to settle their differences by the issue of a binding arbitral award. Should the board have been established voluntarily, the parties may extend such power to all their differences.

35. The Cantons shall have the right to confer more extensive powers on their conciliation boards than those provided for in the present Act.

The principal difference between the activity of the courts and that of the conciliation boards established under the Factory Act is that the latter bodies draw up fresh regulations, in other words, they standardise new working conditions, whereas the function of the judicial organs is to expound and apply existing legislative provisions. The conciliation boards are not competent to deliver judicial decisions, their function is not to settle legal issues by decisions based on existing law, but rather to act as mediators, to conciliate the opposing interests of the two parties and endeavour to end the dispute by bringing about a mutual agreement.

The methods of official mediation mentioned in the Factory Act are conciliation (section 30-33) and voluntary arbitration (section 34). Both of these are based entirely on the principle of freedom of contract, and with either form of procedure, any settlement of the dispute reached takes the form of the voluntary conclusion of an agreement. The only difference between the two methods

¹ A normal contract is a model contract drawn up by the Federal Council or cantonal authorities for certain contracts of employment and the contract of apprenticeship, which creates positive legal rights in the absence of provisions to the contrary, in the sense that its contents are taken to express a contractual intention, if nothing to the contrary is agreed in writing (section 324, Swiss Code of Obligations).

is that in conciliation proceedings, the parties themselves, with the assistance of the conciliation board acting as mediator, decide all points of the agreement, whereas in arbitration, those points on which they cannot agree are by common consent left to be decided by a third party : the arbitration board. Swiss law does not recognise " binding arbitral awards ", in the sense of German law, under which an award can be " declared binding ", thus compelling a party to comply with a proposed agreement that it had rejected.

CONCILIATION PROCEDURE

The Different Kinds of Conciliation Boards

The Factory Act establishes the following boards :

(a) *Inter-Cantonal Conciliation Boards*. There is no Federal conciliation board with jurisdiction over the whole of Switzerland. But in disputes extending beyond the limits of a Canton, the Federal Council or the Federal Department of National Economy, to which this duty has been delegated, appoints an inter-cantonal conciliation board. A special *ad hoc* board may be constituted or the dispute may be referred to a cantonal conciliation board. In such cases, which are very unusual, the practice so far has been to adopt the latter procedure, and *ad hoc* boards have been constituted only in exceptional cases.

(b) *Cantonal Conciliation Boards* are permanent boards set up in all Cantons under section 30 of the Factory Act ; they have to conform to the minimum requirements specified in the Act. They are usually known as *Einigungsämter* – *Offices de conciliation*. With one exception no Canton has set up more than one conciliation board within the meaning of the Factory Act in its areas. The exception is the Canton of Berne which has established one board for each of five different districts, i.e. five boards in all.

(c) *Voluntary Conciliation Boards* are bodies for mediation set up by mutual agreement between the employers' and workers' organisations, whose activity is as a rule confined to one industry. By formal agreement between the two sides they frequently exercise arbitral functions as well, having been empowered in advance to act as arbitration boards in all disputes on points of civil law arising out of collective agreements.

In virtue of section 33 of the Factory Act, such private conciliation boards, if they are appointed by a number of factory owners in the same industry and their workers are officially re-

cognised, to the extent that they may, for the parties concerned, replace the official conciliation board.

Besides these conciliation boards established under the Factory Act, several Cantons possess other boards, which in some cases date back to before 1918 and for some reason were not abolished when cantonal conciliation machinery was adapted to the system established under the Factory Act. For example, Article 37 of the Constitution of the Canton of Appenzell (Outer Rhodes) provides for the nomination of *ad hoc* conciliation boards by the State Council in addition to the boards set up under the Federal Act. In the Canton of Ticino mediatory functions are exercised not only by the cantonal conciliation board but also by the industrial courts, to which for this purpose two employers and two workers are added. As in both Cantons the regulations respecting the cantonal conciliation board extends its competence also to disputes not covered by the Factory Act, these additional mediative bodies are not, however, important in actual practice.

In the Canton of Graubünden, on the contrary, the competence of the conciliation board set up under the Factory Act is confined to disputes covered by the Act, and the cantonal Act respecting strikes prescribes that all other disputes are to be referred to a special conciliation board set up by the State Council. Similarly, in the Canton of Fribourg, besides the cantonal conciliation board, which settles disputes affecting industry, trade and handicrafts, another board has been set up to deal specially with disputes between the management and the employees of State undertakings or undertakings holding concessions. In the Canton of Zurich too there is a certain duplication of functions, the towns of Zurich and Winterthur still possessing their own municipal conciliation boards, though since the cantonal board was established the importance of these bodies has materially declined. They take action only when the parties in disputes not covered by the Factory Act have recourse to them instead of to the cantonal conciliation board.

The Cantonal Conciliation Boards

Composition

The Factory Act contains no provisions relating to the composition of cantonal conciliation boards, but the Federal Council reserves the right to approve the organisation of the board established. The composition of the boards varies in the different Cantons, but they have one feature in common : the person selected as

chairman is impartial in the sense that he may not be an employer or worker. Further, all Cantons, except the two Appenzells, appoint assessors in addition to the chairman and all of them appoint a secretary, who usually attends its meetings in an advisory capacity, unless he is not a member of the board.

As regards their composition the boards may be divided into three main groups :

(1) Joint conciliation boards, consisting of a chairman and one or more representatives each of the employers' and workers' organisations. These include the boards set up by the Cantons of Berne, Basle-Country, Lucerne, etc.

(2) Entirely neutral conciliation boards, whose members do not represent either employers or workers, and are therefore not in any way connected with the dispute. When in the course of the proceedings such boards have to consider technical questions, persons with expert knowledge of the industry may be added in a consultative capacity. Basle Town and Appenzell (Outer Rhodes), are examples ; in the latter the board consists of a chairman only.

(3) Mixed conciliation boards represent a combination of the two preceding systems ; in addition to the chairman and from two to four independent members they include equal numbers of assessors representing employers and workers respectively. This system has been introduced by the Cantons of St. Gallen, Fribourg, Obwalden, Nidwalden, etc.

In a few Cantons, as for example, Zurich, Zug and Appenzell (Inner Rhodes), the conciliation board may be either a neutral or a mixed body, as it is optional whether employers' and workers' representatives shall be added.

As regards the selection of the members of conciliation boards, in several Cantons the office of chairman, and in Obwalden and Nidwalden also that of independent assessor, is held *ex officio* by certain public officials. Thus in Geneva, Obwalden and Nidwalden the chairman, and in the two last-mentioned Cantons the independent assessors, are selected from among the judges, and in the Cantons of Zug, Schwyz, Graubünden, Ticino and Valais from among the administrative officials. In Appenzell (Outer Rhodes), a State Councillor may be appointed to act as chairman of the board. In all the other Cantons the chairman and the independent assessors, who in every case are permanent members of the board, are selected by the cantonal authorities, usually the State Council. The representative members are in some cases

permanent members of the board and in others are appointed as each case arises. Again, a number of these assessors may be permanently appointed while the other non-permanent assessors, who must belong to the trade concerned and are called technical assessors, may be added to the boards when their presence is required. The representative assessors are normally appointed by the same authorities as the chairman and the neutral members, the trade associations concerned being usually entitled to propose the candidates. In the Cantons of Berne, Fribourg and a few others the non-permanent assessors are designated by the parties to the dispute.

In many cases, especially in the more industrial Cantons, a large number of representative assessors (about thirty to forty), are chosen beforehand from among the various occupational groups, and the conciliation board is appointed in every case from among the representatives of the group affected by the dispute. Almost invariably the assessors are under a legal obligation to carry out their duties.

In the Canton of Graubünden a special feature of the board is that the assessors exercise only consultative functions, as do also the technical assessors appointed in the Cantons of Zurich and Zug.

As a rule two or four assessors are appointed, but in many cases further assessors may be added if important disputes are under consideration. For example, the legislation of the Canton of St. Gallen prescribes that in disputes affecting from five to twenty workers the conciliation board is to be composed of the chairman and two assessors; when over fifty workers or several undertakings are affected two additional assessors are to be appointed, and in more important disputes involving questions of principle the number of assessors may be further increased.

Generally speaking, only persons who are of age, reside in the Canton and possess full civil rights and Swiss citizenship are eligible as members of the conciliation board. In a few Cantons women are also eligible, at any rate as technical assessors (Zurich, Solothurn, Schaffhausen), and in the Canton of Basle-Town even foreigners are admitted.

The term of office of the permanent members is the same as that of public officials generally: i.e. from three to four years.

As the cantonal conciliation boards are public bodies, they are placed under the supervision of the State Council, to which they must submit a yearly report. In all other respects they are entirely

independent both of the executive and of the judicial authorities of the State. In several Cantons the conditions governing discharge are regulated by the laws respecting cantonal conciliation boards. Where this is not the case, the State Council in its capacity as supervising authority has the power of dismissing members of the board on the grounds of neglect of duty, inefficiency or unsatisfactory behaviour. In Berne such cases fall under the Act concerning the dismissal of public authorities and officials.

Like all other public officials, the members of conciliation boards may be disqualified, i.e. in certain circumstances (e.g. when several of the assessors are closely related to each other) they are not permitted to take part in the proceedings. In the Canton of Zug provisions relating to disqualification are contained in the Act concerning conciliation boards, while in other Cantons, such as Lucerne, Solothurn, Zurich and Ticino, they are embodied in the rules of procedure.

Competence

(1) *Nature of the disputes to which it extends.* According to section 30 of the Factory Act, the main duty of the conciliation boards — apart from their arbitral functions, which will be considered elsewhere — is to mediate in collective disputes between factory owners and workers in regard to conditions of employment or the interpretation and execution of collective or normal contracts¹. Even in disputes arising out of the interpretation of contracts the functions of the boards are purely mediatory and in no case do they pronounce a decision or a legal verdict, this function being reserved for the ordinary courts. The conciliation board, further, intervenes in such disputes only if they are collective disputes.

As the Factory Act leaves open the question of the definition of collective disputes, it is for the Cantons to draw up detailed regulations in the matter. Most cantonal Orders define the term "collective dispute" as one which on the workers' side affects several persons. Other Cantons stipulate a minimum number of workers; thus the Cantons of Berne, Geneva, Ticino, Glarus, Appenzell (Inner Rhodes), Neuchâtel, St. Gallen and Schaffhausen lay down five, and Aargau and Graubünden six as the minimum number of workers. Basle-Town fixes the number as high as ten, but stipulates that at the request of the parties the board shall also be competent to intervene if the dispute affects only three

¹ Cf. footnote p. 217.

workers, or the State Council considers its intervention to be in the public interest. Fribourg defines collective disputes as differences in regard to conditions of employment that interfere with the normal working of an industry or business. Similar definitions have been laid down by Solothurn and Appenzell (Outer Rhodes) where collective disputes are held to be differences resulting from the opposing interests of the owner of an undertaking and his workers in the matter of conditions of employment or the interpretation and execution of collective and normal contracts, which may result in strikes, boycotts and lock-outs. The decision rests to some extent with the conciliation board itself. Often, indeed, the board is empowered to exercise mediatory or arbitral functions even in disputes which are not collective disputes within the meaning of the Factory Act. This is the principle recognised in the Act passed by Appenzell (Outer Rhodes) which empowers the State Council to entrust the cantonal conciliation board by resolution with the settlement of other disputes relating to conditions of employment between the owners of undertakings and their workers or salaried employees.

By specifying that the function of the conciliation boards is the settlement of collective disputes between factory owners and workers, section 30 of the Factory Act limits the matters within their competence to disputes in undertakings covered by the Act. Under sections 1 and 2 of the Act the Federal Council may define as factories undertakings in which several workers are employed away from their homes, either on the premises of the undertaking and in workplaces belonging thereto, or elsewhere on work connected with the industrial working of the undertaking. This definition is further elaborated in the Regulations for the application of the Act, according to which factories, within the meaning of the Federal Factory Act, are industrial undertakings using mechanical power and employing six or more workers, undertakings not using mechanical power and employing six or more workers, if these workers include at least one young person (below the age of eighteen years), undertakings employing eleven or more workers and finally, regardless of the number of workers employed, specially dangerous undertakings or undertakings which are obviously in the nature of factories. Besides these, the principal railway workshops are also held to be factories.

In virtue of section 35 of the Factory Act, which authorises the Cantons to extend the competence of the conciliation boards also to differences not covered by the Act, the majority of the Cantons have empowered the boards to intervene also in disputes

affecting undertakings not covered by the Factory Act. Unterwalden, Graubünden, Glarus and Valais are the only Cantons which expressly limit official conciliation and arbitration to disputes in factories, while Schwyz empowers the State Council to extend the competence of the board by special Order. In the Canton of Zug the conciliation board, besides intervening in factory disputes, is also competent to deal with construction undertakings engaged in bricklaying, stone-cutting, carpentry and ferro-concrete construction, while by an Order of the State Council its competence may be extended to other classes of undertakings. The Orders issued by all the other Cantons, too, empower the boards to intervene in disputes not covered by the Factory Act, those of five Cantons even including agricultural disputes (Lucerne, Solothurn, Basle-Town, Appenzell (Outer Rhodes) and Appenzell (Inner Rhodes)). Some Orders expressly extend the jurisdiction of the boards to commercial undertakings as well (St. Gallen, Aargau, Ticino), while the text of other Orders implies that such undertakings are included. The same is true also as regards home-work, which is specially mentioned in the Order of Basle-Country. A few Cantons further empower the boards to intervene in disputes not within their competence, at the request of the parties.

Most of the Cantons do not make separate provisions concerning the competence of the conciliation boards in disputes in public undertakings. Uri is the only Canton that provides for the settlement of all such disputes without exception by the conciliation board. In Solothurn the board intervenes only in disputes in public and municipal undertakings that fall under the provisions of the Federal Factory Act, the cantonal Act for the Protection of Female Workers, or the Compulsory Insurance Act and are not primarily public utility undertakings. A similar distinction is made in Neuchâtel as regards municipal undertakings. Basle-Town has set up special committees for the settlement of disputes in public undertakings and the Canton of Fribourg a special conciliation board for State undertakings and undertakings holding State concessions. Where no such special provisions have been enacted, the competence of the conciliation boards extends to any public undertaking subject to the Factory Act, whose staff is appointed on a contract concluded in accordance with private law.

Under section 6 of the Factory Act, disputes in Federal workshops, except Federal Railway workshops, are settled by the *Federal Workshops Board* which the Federal Council must appoint

to investigate workers' complaints respecting general conditions of employment.

Other cases are dealt with under the relevant provisions of the legislation respecting public servants.

(2) *The area of jurisdiction.* Several cantonal Orders do not mention the area of jurisdiction of the conciliation boards, and those that refer to the subject differ substantially in their definitions. A usual distinction is between undertakings within and those outside the limits of a Canton, but some Cantons do not stop there. For example, Basle-Town lays down that the conciliation board may intervene in collective disputes between the owners of undertakings established in the Canton, or undertakings outside its boundaries employing workers within the Canton, and their workers employed within the limits of Basle-Town. Here the decisive factor as regards competence is the locality in which the dispute arises or in which its economic and social effects are experienced.

Disputes extending beyond the limits of a Canton are referred to the inter-cantonal conciliation board, which has been mentioned elsewhere.

(3) *Other duties of the conciliation boards.* Mention has already been made of the fact that under the provisions of the Federal Factory Act the duties of the conciliation boards are confined to the settlement of disputes in factories by means of conciliation and, if necessary, arbitration. It was further noted that the Cantons, in virtue of section 35 of the Factory Act, have generally extended the jurisdiction of the conciliation boards to undertakings not covered by the Act. To these functions some Cantons have, however, added duties which can hardly be described as lying within the sphere of conciliation and arbitration.

Thus, the St. Gallen conciliation board has the duty of advising the State Council on questions of social policy and of investigating the workers' conditions of employment, remuneration and living. In some Cantons, moreover, the conciliation boards are entrusted with the duty of securing the observance of the settlements reached through their agency and of their arbitral decisions, and some boards centralise collective contracts of employment and collective agreements relating to conditions of employment generally.

The Parties

As parties to a dispute either a single owner of an undertaking or several owners, i.e. a trade association, may appear before

the conciliation board on the employers' side, but on the workers' side more than one worker must appear in every case.

The representation of the parties is usually the subject of special regulations. In all Cantons the right of the parties to send representatives is formally recognised or understood, but in most of them professional representation by counsel is excluded. Appenzell (Outer Rhodes), while accepting the principle of representation, requires the parties to appear in person.

In some cases the number of representatives is limited, while various Orders lay down that only persons fulfilling certain specified conditions may represent the parties, e.g. they must have legal power to assume obligations and acquire rights (*persönliche Handlungsfähigkeit*), be directly concerned in the dispute, reside in Switzerland or even within the Canton, and possess Swiss citizenship. A few Cantons expressly declare women to be eligible. Normally the secretaries of associations are allowed to act as representatives, but sometimes they may do so only subject to certain conditions, for example, if the association in question represents a substantial proportion of the workers affected by the dispute.

Procedure

Generally speaking, if the competence of the conciliation board extends to differences not falling under the Factory Act, the same procedure is adopted as for disputes in factories. There are a few unimportant exceptions to this rule, e.g. according to the Zurich regulations in differences not falling under the Factory Act the parties are not bound to appear before the board and participate in the proceedings.

The Federal Act stipulates that the conciliation boards have to intervene *ex officio* or upon request of the authorities or of the interested parties. This stipulation is binding upon the Cantons and is generally reproduced as it stands in their Orders.

The boards can intervene on their own initiative in all cases in which a dispute has arisen, but the Orders issued by some Cantons empower them to do so also in order to prevent a threatened conflict. Very frequently the board initiates conciliation proceedings if the parties hesitate to refer the dispute to it for fear that such action may be interpreted as a sign of weakness. In such cases the board is generally informed of the existence of the dispute through the press, indeed it is not at all unusual to find that such announcements are communicated to the press with the sole object of drawing the attention of the board to the dispute and so avoiding the necessity of direct notification.

The authorities empowered to demand the initiation of conciliation proceedings are, in the first place, the cantonal and, in the second place, the local authorities. In practice they intervene most frequently to bring about the resumption of negotiations which have broken down, at a stage when for tactical reasons the opposing parties do not wish to renew their request for the institution of conciliation proceedings.

As a rule, the parties are required to address their request to the board in writing and to give information relating to the character of the strike or lock-out and the demands of the two sides. Often the parties are not only entitled but obliged to request the intervention of the board, the notification of disputes being compulsory. Such notification has to be given by the executives of the employers' and workers' organisations affected by the dispute, or in the absence of such organisations, by strike or lock-out committees, workers' committees, wages committees, or again, if none of these bodies exists, by any employer or worker affected by the dispute. Further, disputes have to be notified by various public authorities such as municipal councils and labour offices, and if disputes have been referred to private conciliation boards, by these. Many cantonal Orders specify the circumstances in which disputes are to be notified. Such conditions are, for example : the occurrence of a stoppage of work, strike, lock-out, boycott or other form of industrial strife, and the breakdown of private negotiations or conciliation proceedings before a private conciliation board. Some Cantons stipulate that the dispute must be notified within a specified time limit. A few Cantons also lay down detailed provisions in regard to the form of the notification. The notice has generally to be given in writing and indicate clearly the parties to the dispute, their representatives and the question at issue. Zurich and Solothurn go even further and require information respecting the date on which the dispute has arisen and the number of undertakings and persons affected ; the parties must further formulate their demands, indicate the grounds on which they are brought forward and state whether the dispute has been referred to a private conciliation board and whether the board has initiated proceedings.

In the nature of things, conciliation proceedings are conducted orally. The provisions of cantonal orders differ widely in regard to the publicity of proceedings. Some Orders make no ruling on this subject, others definitely state that the proceedings are to be public and others again that they are to be private. Finally, some Cantons solve the problem by stipulating that as a general

rule the proceedings are to be private, but that in exceptional cases permission may be granted to admit the public. Generally speaking, however, the discussions, both of conciliation proposals and of arbitral awards, are private.

Section 31, paragraph 2, of the Federal Factory Act provides that any person subpoenaed by a board, (i.e. both the parties and the witnesses) shall be compelled, under penalty of a fine, to appear, to take part in the proceedings and to give all necessary information. This, therefore, is the general principle laid down by Federal law, but the detailed regulations enacted by the Cantons show considerable variations. Thus, the laws of some Cantons provide that if one of the parties fails to appear, the board, after hearing the party present at once draws up a conciliation proposal. This proposal is submitted to the parties for their approval or rejection, which has to be communicated in writing within a specified time limit. Other Cantons provide for a second summons, while a third group interpret a party's failure to appear as a formal refusal to accept mediation and therefore consider conciliation to have failed.

As a rule, the provisions concerning the establishment of the facts and in particular the taking of evidence and the nature of the evidence to be submitted, are similar to those governing procedure in the civil courts. But some Cantons that admit oaths and pledges in civil law suits expressly exclude them from the settlement of disputes. Attention should also be drawn to a provision enacted by several Cantons, to the effect that if one of the parties submits information respecting business secrets or the internal situation of an undertaking, this may be disclosed to the chairman and, if need be, the independent assessors, but not to the representative members of the board or the opposing party.

Contrary to the provisions governing ordinary procedure in the civil courts, some cantonal regulations permit private discussion between the conciliation board and one of the parties, while other Orders are silent on the subject.

The proceedings are terminated if the parties reach an agreement in the course of the proceedings — which is unusual — or if the board draws up a conciliation proposal. Under the legislation of several Cantons, the board, in drawing up this proposal is not bound by the opinions of the parties, but has full liberty to act as it sees fit. As a rule the conciliation proposal, which in some Cantons, but not in others, must be supported by a statement of the grounds on which it is brought forward, takes the form of an oral communication, but may also be notified to the parties in writing. The latter must

signify their approval or disapproval, generally within a stated period. In some Cantons failure to do so within the specified time limit is interpreted as signifying acceptance, in others the parties have to make a formal statement of acceptance which must be recorded in the minutes ; the absence of such a declaration is deemed to be equivalent to rejection. Finally, some Cantons require the parties to sign a statement of acceptance.

If the conciliation proposal is rejected by either or both of the parties, and neither of them is willing to have recourse to arbitration, the conciliation proceedings are deemed to have failed, for the time being at any rate. As a rule this result has to be recorded in the minutes, with a statement of the grounds on which the proposal was rejected. But most Cantons require the conciliation board to take steps to bring about a resumption of the negotiations immediately or within a stated time limit, or else to notify the Government of the failure to reach a settlement, which can then order the proceedings to be re-opened. A very usual practice is to require the proceedings to be made public, especially the board's conciliation proposal and, sometimes also, its reasons for bringing it forward and the reasons advanced by the parties for its rejection. The object is to influence the parties to some extent through the pressure of public opinion.

No legal action is possible against a conciliation proposal, but in nearly every case an appeal may be made to the Government in connection with the formal proceedings, or particular provisions, especially penal clauses. Moreover, a few Cantons, such as Basle-Town, expressly allow an appeal against intervention by a board or a refusal to intervene, if such action is contrary to law (appeals relating to competence).

An interesting provision, apparently unique of its kind, is that of the Geneva Act which in a sense introduces a right of appeal by empowering the parties to apply to the State Council for a further and final attempt at conciliation in cases where the conciliation board has failed to reach a settlement.

Legal Effects of Conciliation Agreements

The board's conciliation proposal as such has no legal force, but if it is accepted by the two parties, it is binding as a contract. Sometimes it may also be given the force of a judicial verdict (e.g. in the Canton of Appenzell, Outer Rhodes). The same is true of an agreement concluded by the parties in the course of the proceedings, without waiting for the board to draw up a conciliation proposal.

In order to secure the observance of agreements, it is in several cases provided that, at the request of the State Council or of one of the parties, the conciliation board may investigate and make public any contravention of an agreement concluded before it. Moreover, some cantonal Orders empower the conciliation board to secure the fulfilment of the obligations assumed by requiring both parties to deposit a security, which is forfeited if the board declares that they have failed to carry out the agreement. Again, some Cantons empower the board to issue a final decision on differences connected with the interpretation of the conciliation agreement.

The Obligation to Resort to Peaceful Means of Settlement

A large number of cantonal Orders contain a provision which is intended to further the main purpose of the conciliation boards: the prevention of industrial strife. This provision establishes an obligation to have recourse to peaceful means of settlement and usually takes the form of prohibiting resort to force, while in some cases even open propaganda in favour of strikes, boycotts or lock-outs is prohibited. In the Cantons of Aargau, Fribourg, Ticino, Vaud, Valais, Neuchâtel and Geneva, the obligation to use peaceful means of settlement is present only while conciliation or arbitration proceedings are in progress. Here its main object is to prevent the tension between the parties to the dispute from being increased and the chances of an amicable settlement thus prejudiced. In other Cantons (Zurich, Solothurn and Appenzell (Outer Rhodes), the obligation extends over the whole period during which the agreement or arbitral award is enforceable and is thus intended as a guarantee of its observance. Finally, in Lucerne, Schaffhausen and St. Gallen, the obligation extends over both the period of negotiations and the period during which the agreement or arbitral award is enforceable.

Penalties

Section 31, paragraph 2, of the Federal Factory Act provides that any person subpoenaed by a board shall be compelled, under penalty of a fine, to appear, to take part in the proceedings and to give all necessary information.

In order to secure the enforcement of this provision and the orderly conduct of the proceedings, all cantonal Orders contain penal clauses. The provisions in question vary widely, both in the definition of the offence and in the penalties imposed. Some

Cantons confine themselves to reproducing the text of the Federal provision in question, others go further and impose penalties also on persons who, without sufficient cause, fail to appoint representatives or submit documents when called upon to do so. Various cantonal laws also impose penalties for failure to notify a dispute, the making of frivolous claims, disturbance of the proceedings, refusal to serve as a member of the board, disclosure of confidential information by members of the board, etc.

The fines imposed usually vary from 10 to 100 francs and can as a rule be doubled when the offence is repeated. Higher penalties are imposed for a refusal on the part of members of the board to carry out their duties or for a breach of confidence. In the last-mentioned case the Canton of Vaud imposes a maximum fine of 2,000 francs or a month's imprisonment. Various other offences are also punished in some Cantons with imprisonment as well as with fines.

As regards the obligation to have recourse to peaceful means of settlement, some Cantons merely establish the obligation without imposing penalties for its non-observance. But where such penalties are imposed they are usually much more severe. For example, under the regulations issued by St. Gallen a fine of 50 to 1,000 francs may be imposed, and in Vaud the penalty is a maximum fine of 10,000 francs or up to three month's imprisonment. The Canton of Fribourg punishes even the act of inciting others to strike.

If it is shown from the facts that a serious offence or crime has been committed, the provisions of the ordinary Penal Code apply.

The power of enforcing the penal regulations rests with the chairman, the board or, in some Cantons, the State Council. If it is exercised by the chairman or the board, an appeal usually lies with the State Council, which is competent to give a final decision.

ARBITRATION PROCEEDINGS

Section 34 of the Federal Factory Act stipulates that the parties have the right in every case to empower the conciliation board to settle their difference by means of an arbitral award. They may extend such power to all their differences if the board has been established by mutual consent.

Here too it is for the Cantons to draw up the necessary detailed regulations, and as a rule they establish procedure closely resembling conciliation procedure.

As regards organisation, it will be found that in almost every

case the conciliation boards, as constituted for purposes of mediation, act as arbitration boards. Occasionally, however, additional assessors are appointed (e.g. in Zurich and Berne), who generally represent the two sides. The Canton of Fribourg constitutes an exception ; here the State Council may at the request of the parties set up a special arbitration commission. In the absence of regulations on the subject the composition of this body is necessarily decided by the authorities responsible for its appointment.

Recourse to arbitration is generally had if no settlement is reached by conciliation ; but in the Canton of Schwyz the parties may refer a dispute to the conciliation board for arbitration even if no previous attempt has been made to settle it by conciliation. Failing an agreement by conciliation, the board usually invites the parties to state, within a given time limit, whether they are willing to submit the dispute to it for arbitration. If both parties agree to do so, arbitration proceedings are begun. In several Cantons the parties are expressly required to give their assent in writing.

Several Cantons go beyond the provisions of the Federal Factory Act and also provide for the institution of arbitration proceedings at the request of only one of the parties or of the Government. In the Cantons of Zurich and Graubünden the chairman, without being requested by the parties or the Government to initiate proceedings, may do so *ex officio* if he considers that such action may facilitate a settlement.

The procedure is generally the same as for conciliation. In a few Cantons such as Schwyz, Fribourg and Vaud the conciliation board or the chairman is left free to determine the procedure. Fribourg expressly stipulates that a simple and expeditious procedure is to be established.

The arbitration proceedings are terminated by the delivery of an arbitral award, which as a rule is immediately communicated to the parties orally, and subsequently forwarded to them in writing, together with a statement of the grounds for the decision. An arbitral award, like a conciliation proposal, may often be published in the official gazette at the request of the parties or if the conciliation board considers its publication to be in the public interest. In the Canton of Vaud a refusal of either party or both parties to submit the dispute for arbitration is published as well.

In principle an arbitral award has the same legal force as a conciliation proposal. If both parties have previously agreed to accept an award or subsequently agree to do so, it is binding as a contract, while in addition many cantonal Orders give an award the

force of a judicial decision more frequently than they do a conciliation proposal. On the other hand, arbitral awards delivered at the request of an authority or of only one of the parties, and not subsequently accepted by both parties, are not enforceable or binding upon the parties. Such rejected awards therefore have a purely moral force which is strengthened by their publication.

As in the case of amicable settlement, the laws of several Cantons empower the conciliation board at the request of either party to secure fulfilment of the obligations imposed upon the parties by an arbitral decision, by requiring them to deposit a security. Under the Ticino regulations a refusal to deposit such a security must be published in the official gazette.

The provisions concerning the obligation to have recourse to peaceful means of settlement generally apply to arbitration as well as to conciliation procedure.

The same is true of the provisions relating to legal means of redress. No legal action is permitted against the contents, either of an arbitral decision, or of a conciliation proposal. The Zurich regulations constitute the only exception : they allow an appeal from an arbitral decision to the State Council on the ground of an infringement of the law or a decision contrary to the evidence. If the appeal is successful, the State Council sets aside the decision in question and refers the dispute back to the conciliation board for reconsideration. In nearly every Canton the parties have a right of appeal in the matter of formal procedure.

§ 3. — Results Achieved by Conciliation and Arbitration in the Cantons

The following table, based on enquiries undertaken by the Federal Office of Industry and Labour, gives the number of collective disputes considered by the cantonal conciliation boards over a period of thirteen years :

Year	Number of disputes considered	Year	Number of disputes considered	Year	Number of disputes considered
1919	526	1924	159	1928	140
1920	426	1925	130	1929	162
1921	268	1926	103	1930	176
1922	317	1927	125	1931	159
1923	142				

Probably the decline in the number of disputes referred to the official conciliation boards is mainly due to the fact that the change over from conditions of war to those of peace naturally raised a number of difficulties that are absent in normal times. Another reason for the decline is the increasing practice of regulating conditions of employment by the conclusion of collective agreements and the development of private conciliation and arbitration boards, as a result of which recourse to the official conciliation boards is less frequent.

Another point which merits attention is that the collective disputes enumerated above include many of slight industrial importance. Federal statistics throw no light on this point, but the position is to some extent illustrated by the data collected by the Zurich conciliation board. As is shown by the following table, from 1927 to 1931 this board dealt with almost a quarter of the cases covered by the Federal statistics. According to these figures, out of a total of 38 disputes in 1928, 5 affected less than 10, and 16 less than 30 workers. In 1929, 41 conflicts were dealt with, and of these 7 affected less than 10, and 20 less than 30 workers.

The table below shows the number of disputes referred to the different conciliation boards in 1927 to 1931 :

Canton	Disputes dealt with in				
	1927	1928	1929	1930	1931
Zurich	33	38	41	44	36
Berne	21	24	33	48	37
Lucerne	6	5	3	4	3
Uri	—	1	—	—	—
Schwyz	1	—	—	—	—
Obwalden	—	—	—	—	—
Nidwalden	—	—	—	—	—
Glarus	—	—	1	1	1
Zug	—	1	2	1	7
Fribourg	2	2	2	3	1
Solothurn	6	4	7	9	8
Basle-Town	12	10	13	19	9
Basle-Country	4	4	3	5	6
Schaffhausen	1	2	1	1	—
Appenzell (Outer Rhodes)	2	1	2	1	—
Appenzell (Inner Rhodes)	—	—	1	—	—
St. Gallen	7	11	12	8	12
Graubünden	—	—	—	—	1
Aargau	4	7	10	5	7
Thurgau	1	4	2	9	10
Ticino	4	7	9	6	8
Vaud	15	6	13	6	6
Valais	—	1	2	1	1
Neuchâtel	2	5	2	2	4
Geneva	4	7	3	3	2
Total	125	140	162	176	159

The table shows that in nine Cantons the conciliation boards, during one or more of the years under consideration, were not called upon to intervene at all, while only three to five boards regularly dealt with more than ten disputes a year.

The results of the intervention of the cantonal conciliation boards were as follows :

Year	Number of disputes settled	Proportion of disputes settled	Number of disputes not settled	Proportion of disputes not settled	Total number of disputes
		per cent.		per cent.	
1927	90	72	35	28	125
1928	92	66	48	34	140
1929	125	77	37	23	162
1930	129	73	47	27	176
1931	110	69	49	31	159

A point worth mentioning in this connection is that failure to settle a dispute is not necessarily followed by open strife. In almost every case conciliation may bring about a more or less substantial measure of agreement, so that, even if no definite understanding is reached, the remaining differences may be so slight that the parties no longer consider it worth while to resort to force. In such cases the two sides usually rest content with the fact that the dispute has failed to be settled. It is even by no means unusual that the mere exhibition, in the course of the proceedings, of the economic strength of the parties causes the struggle to be abandoned.

It is difficult to make an exact estimate of these partial successes of the official conciliation boards, but by way of illustration it may be noted that in the Canton of Zurich in 1928 no agreement was reached in 8 out of 38 disputes and that of these 8 disputes only 4 were followed by strikes. In 1929 out of 41 cases 9 failed to be settled and of these only 2 resulted in strikes.

The number of persons affected by the disputes in 1929 and 1930 was as follows :

	1929		1930	
	Employers	Workers	Employers	Workers
(a) Disputes settled by conciliation. . . .	1,189 (66 %)	11,094 (60%)	1,114 (75 %)	26,415 (67%)
(b) Disputes not settled by conciliation . .	620 (34 %)	7,431 (40%)	371 (25 %)	13,288 (33%)
Total.	1,809	18,525	1,485	39,703

Considered from this point of view the results attained are much less favourable, as the disputes which failed to be settled (23 per cent. of the total) affected 34 per cent. of the employers and 40 per cent. of the workers. It follows, therefore, that an amicable settlement was most frequently reached in disputes of less industrial importance.

The statistics do not clearly indicate in how many of the above collective disputes the persons affected fell under the provisions of the Federal Factory Act. As in the case of disputes involving a whole industry it may happen that the Factory Act applies to some of the undertakings affected but not to others. It is difficult to draw a distinction of this kind. It may definitely be assumed, however, that the number of disputes that cannot be classed as so-called factory disputes is fairly large. This is proved by the fact that in the Federal statistics the building industry, which is only partly covered by the Factory Act, heads the list of industrial groups in the table showing the distribution of disputes by industries. In 1927 48 out of 125, in 1928 52 out of 140, and in 1929 46 out of 162 disputes occurred in the building industry. To these should be added disputes in various other occupations not subject or only partly subject to the Factory Act, such as commerce, transport and communications, and gardening.

So far the activity of the conciliation boards in the field of voluntary arbitration does not appear to be very important. The number of arbitration awards delivered by the boards was as follows :

1927 :	8	awards, of which 6 were binding and 2 not binding
1928 :	5	„ „ 1 was „ „ 4 „ „
1929 :	9	„ „ 5 were „ „ 4 „ „
1930 :	10	„ „ 4 were „ „ 6 „ „
1931 :	9	„ „ 1 was „ „ 8 „ „

In disputes involving the determination of new conditions of employment it happens only in exceptional cases and on minor points, if at all, that a conciliation board is asked to deliver a binding award. It may therefore be assumed that the arbitral activity of the boards has so far been confined chiefly to differences connected with the interpretation of existing agreements.

It should be noted, however, that in recent years there has been a growing practice of submitting disputes to an official conciliation board for arbitration, if for any reason the parties to a collective labour agreement or other collective agreement relating to conditions of employment have refused or failed to settle their differences

before a private arbitration board. The activity of the boards in this sphere is therefore likely to be more important in future. The number of cases in Switzerland in which conciliation boards have been designated to act as arbitration boards has not yet been established. In the Canton of Zurich, the conciliation board is at present so empowered under sixteen collective labour agreements, of which one is a national agreement.

Finally, to complete the above survey of existing conditions, some indication should be given of the present position in regard to the prevalence, in spite of official mediation, of the most important forms of industrial strife : strikes and lock-outs. The Federal statistics, which refer only to the past five years and do not take account of stoppages of work lasting for only one day, give the following figures :

Year	Number of strikes and lock-outs	Number of undertakings affected	Maximum number of workers affected	Estimated number of working days lost
1927	26	328	2,058	34,160
1928	45	283	5,474	98,015
1929	39	551	4,661	99,608
1930	31	322	6 397	265,695
1931	25	161	4,796	73,975

It should be observed that the increase in the number of disputes in 1928 and 1929 is almost entirely due to increased unrest in the building industry. Whereas in 1927 that industry accounted for only 1,478 of the working days lost, in 1928 this number rose to 39,007 and in 1929 to 48,479.

It should further be noted that of the strikes enumerated above a considerable proportion were of short duration and were ended by the intervention of the conciliation boards. On this point no exact information is available ; but it may be estimated that most of the stoppages of less than 10 days' duration (16 in 1927, 26 in 1928, 20 in 1929 and 15 in 1931) were ended as a result of official mediation.

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GERMANY

§ 1. — Introduction ¹

Germany has possessed a legally regulated system for the settlement of labour disputes by means of conciliation and arbitration for a comparatively short time only. Before the war, the judicial authorities responsible for the settlement of labour differences — industrial courts, commercial courts, etc. — also carried out the duties of conciliation boards, but were not in this respect of much practical value. A more important factor was the inclusion in big collective agreements of clauses concerning machinery for the prevention and settlement of disputes between the parties, of which more will be said later. But it was not until the war that conciliation and arbitration attained general importance as an independent legal system. The Auxiliary Service Act of 5 December 1916 created a system for the settlement of labour disputes for war purposes, with which indeed it was primarily concerned. This system comprised conciliation committees, composed of equal numbers of employers and workers, under the chairmanship of a person appointed by the War Board (military authority created during the war). They dealt with all sorts of disputes on wages and other conditions of employment, collective and individual. If both parties had not already applied to one of the other existing bodies (commercial courts, etc.), it was sufficient for one of them to apply to a conciliation committee, and proceedings were opened. Awards were to be given even if one party did not attend or did not take part in the negotiations; they were not directly binding, but as the committees were dependent on the War Board, they were not without military authority.

This legal innovation is important not only for the improvement of machinery as compared with that previously in existence, but still more in virtue of its consequences; for it was on the

¹ For the economic facts which give conciliation and arbitration such a great importance for Germany see *Statistisches Jahrbuch des deutschen Reichs*.

Auxiliary Service Act that the further development of conciliation and arbitration was based. The events which followed the war, — revolution, demobilisation, the danger of strikes, etc. — made it essential to have as complete a system as possible for settling disputes, and though the Auxiliary Service Act was repealed, it was necessary to retain, if only temporarily, its clauses on conciliation and arbitration. Once the rest of the Act was out of force, these clauses needed a fresh legal basis, which was provided by the Order of the Council of People's Commissioners' of 23 December 1918.

Since a completely new system could not be prepared with sufficient speed, the Order contented itself with taking over and expanding the arrangements set up by the Auxiliary Service Act. The decentralised system was retained, but the formation and composition of the committees were altered, and their competence extended. A series of other Orders and Acts (the Works Councils Act, for instance) turned other duties over to the conciliation committees ; and the system was completed by the Orders of 4 and 24 January 1919, and finally by the consolidating Order of 12 February 1920, in which it was provided that awards could be declared binding by the demobilisation authorities or by the Federal Ministry of Labour. This was the first real adjustment legislation ; but it was far from perfect, and contained much that was obscure.

The regulations of 1918 were regarded as temporary, and were to remain in force only until further legislation should be passed. Such legislation was actually undertaken, and a draft Conciliation Order was prepared by the Ministry of Labour in March 1920. It was, however, frequently altered, and was finally submitted to the Reichstag in a completely recast state as a draft Conciliation Order with Preamble on 21 March 1922¹. The Reichstag discussed it and referred it to the Committee on Social Affairs. The draft Order was never voted, but it was not withdrawn by the Government. It was much discussed, as a whole and in detail, in economic and political circles, particular attention being paid to the provisions introducing a certain degree of compulsory arbitration². The extraordinary circumstances of the inflation (1923) did not permit of any further delay, and certain very pressing reforms were forced through as quickly as possible — in particular, the re-organisation of the official conciliation machinery, and the removal

¹ *Reichstag Records*, No. 3760, first electoral period, 1921-1922.

² Cf. below, p. 257.

from the committees' competence of disputes which are not considered by German law as capable of settlement by conciliation or arbitration — that is to say, the limitation of the latter to collective disputes. Finally, the Federal Government issued a Conciliation Order on 30 October 1923, in pursuance of the Emergency Powers Act of the same year. This was supplemented by two administrative Orders issued by the Federal Minister of Labour on 10 and 29 December 1923. The first of these, which does not concern this study, since it was repealed by the Labour Courts Act of 23 December 1926, dealt in detail with the labour court procedure, the other with that of conciliation and arbitration¹. The Orders came into force on 1 January 1924. The existing German arbitration and conciliation system is based on this legislation.

§ 2. — The System in Force

NATURE OF CONCILIATION AND ARBITRATION IN GERMAN LAW

The German arbitration and conciliation system derives its legal force from the above-mentioned Order of 30 October 1923 (abbreviated C.O.)², supplemented by the Administrative Order of 29 December 1923 (abbreviated A.O.). Section 3 of the C.O. describes conciliation and arbitration as "assistance in the conclusion of collective agreements (collective contracts, works agreements)". This indicates that only collective labour disputes may be dealt with by such machinery. Individual disputes — that is to say disputes between the parties to an individual contract of service — are thus excluded from the competence of conciliation and arbitration institutions, and come under the Labour Courts Act of 23 December 1926³, according to which they are to be settled by labour courts or an agreed arbitration court. Not every collective dispute, but only those concerning the conclusions of a collective agreement, may be dealt with by conciliation and arbitration machinery. Political or sympathetic strikes, etc., are thus excluded, as are disputes arising out of the interpretation

¹ By section 3, subsection 1, of the Conciliation Order, the Federal Minister of Labour is empowered to issue further orders for its administration. These may not exceed the bounds set by the original Order, and are invalid if they do so. In virtue of this provision, the Federal Labour Court has declared section 21, subsection 5, para. 4, of the Administrative Order invalid. See below, p. 250.

² *Legislative Series*, 1923, Ger. 6.

³ *Ibid.*, 1926. Ger. 8.

of existing collective agreements¹. This latter type of dispute may be termed "disputes on rights" (as opposed to disputes on the regulation of collective relations) and as such comes like individual labour disputes under the Labour Courts Act, which lays down that the use of conciliation and arbitration machinery for the alteration of an existing collective agreement against the will of one of the parties to it, is not permissible, for it would "entail a breach in the principle of the sanctity of contracts, on which the value of collective agreements, in common with that of the whole of contract law, depends."²

The Orders distinguish between two types of collective agreement: collective contracts and works agreements. This differentiation accords with the double structure of the German labour system, as described in Article 165 of the Federal Constitution. It is, says this Article, the duty of workers and salaried employees to co-operate on an equal footing with employers in the regulation of wages and other conditions of employment, as well as in the whole economic development of the forces of production. The organisations on either side and their agreements are recognised. "By the use of the word 'co-operate', the Article gives a constitutional basis to the idea of the autonomy and self-determination of the two parties to the fundamental labour contract"³. The system of workers' and industrial councils gives labour its double structure, based on the undertaking and on the occupation; and this dualism is given practical effect, on the one hand by the representation of the workers in each undertaking under the Works Councils Act, and on the other by the trade unions, agreements being known as "works agreements" or "collective contracts" according as they are concluded by the one or by the other. These agreements give self-determination concrete form by setting up standards for the regulation of wages and other conditions of employment, which are then generally regarded as having the force of law. "The relation between collective contracts and works agreements is that the normative parts of the former express occupational autonomy, those of the latter autonomy within an undertaking."⁴

¹ Informal mediation can, however, be attempted if the public interest demands it (section 8, para. 2, A. O.).

² Judgment of the Federal Labour Court of 22 January, 1929 (North-West German iron dispute). INTERNATIONAL LABOUR OFFICE: *International Survey of Legal Decisions on Labour Law*, 1929, Germany, No. 24.

³ DERSCH: *Kommentar zur Schlichtungsverordnung*, p. 146.

⁴ *Ibid.*, p. 150.

A collective contract is, according to section 1 of the Order of 23 December 1918, a written contract between an employer or an association of employers on the one hand, and associations of workers on the other hand, concerning the conditions in which individual labour contracts shall be concluded. The normative parts of a collective contract are all those which may be incorporated in the individual labour contracts — concerning wages hours of work, holidays, etc. — while the remaining clauses determine the legal rights and duties of the parties to the collective but not to the individual contracts ; they prohibit militant action, disciplinary measures, etc.

A labour contract between individuals is invalid in so far as it is at variance with the normative parts of a collective contract to which they are parties, unless the variation is permitted in the collective contract itself or entails more favourable conditions for the worker. The corresponding clauses of the collective contract come automatically into force in place of the invalid clauses (section 1 of the Collective Contracts Order).

Works agreements are collective agreements concluded between employers and workers in one undertaking, the latter being represented by a legally constituted works council (sections 75 and 80 of the Works Councils Act). They usually take the form of “ rules of employment ”, which may, according to sections 134 et seq of the Industrial Code, be obligatory for certain undertakings and which regulate the beginning and the end of working time, the mode of payment, etc.¹. They are usually regarded as constituting legal standards, but clauses concerning obligations under the law of contract are not usually to be found in works agreements. The latter do not, like collective contracts, preclude less favourable individual agreements and are therefore less effective.

According to the Order, conciliation and arbitration are “ assistance in the conclusion of collective agreements ”. The present German legislation thus makes no distinction between conciliation and arbitration ; the wording of section 3 might even lead the reader to believe that the German system is based simply on conciliation ; but the declaration that an award is binding, which will be discussed later, introduces a strong element of arbitration. There are obstacles in the way of the classification of conciliation and arbitration among the existing legal categories, and their place in jurisprudence is contested. Conciliation and arbitration

¹ Cf. the decision of the Federal Minister of Labour (*Neue Zeitschrift für Arbeitsrecht*, 10 June 1924, col. 628) on provisions concerning hours of work.

are not regarded as a judicial function by the theorists of the moment, since they do not interpret law, but create it. They are, therefore, generally included under "Administration" ¹.

VOLUNTARY AND OFFICIAL CONCILIATION AND ARBITRATION

German labour law attempts to leave the regulation of conditions of employment as far as possible to the great associations of employers and workers themselves, even when there are obstacles in the way of such regulation. Before the war a system of previous arrangement for conciliation and arbitration in collective contracts had begun to develop, and its best results were the general or national agreement. The printers' agreement, which has often served as a model, is the most famous of these and arranged for the formation of local joint conciliation boards, against whose judgments the "conditions of employment board" (*Tarifamt*) was the court of supreme appeal. Its decisions were usually binding. This board had not only to settle disputes which had arisen, but also to consider and decide questions such as the extension, revision and alteration of contracts on their expiry, and to regulate such matters as had been left open by contracts (overtime for instance).

This development was held up by the war and its consequences, and permanently lost its force. As the law now stands, voluntary conciliation is recognised and even has precedence over official proceedings, for the State can only intervene if a voluntary conciliation body has not been agreed on, or, if agreed on, has not functioned or has come to no definite decision within a given period (C.O., section 3; A.O., section 9).

The legal consequences of voluntary conciliation are the same as those of official proceedings, in particular with regard to the declaration that an award is binding ². It must, however, be remembered, firstly that the parties can make the awards binding in advance by adding a clause to that effect in their collective agreement, and secondly that the institutions to be appealed to in accordance with such collective agreements are usually both conciliation bodies and arbitration courts, and so can give decisions on disputes on rights or on interests, individual or collective ³.

¹ For the declaration that an award is binding see below, p. 264.

² See below, p. 264.

³ See on the meaning of these notions above p. 242, and judgment of the Federal Labour Court of 19 June 1929 (*Kartenauskunftei des Arbeitsrechts*, No. 319 of 5 June 1930).

In so far as these institutions perform the function of arbitration the consequences of their awards are regulated by the Labour Courts Act; in so far as they are conciliation bodies, they come under the Conciliation Order, and the above applies to them.

These is much less voluntary than official conciliation, despite the fact that many collective contracts provide for the adjustment of disputes ¹.

THE CONCILIATION AND ARBITRATION AUTHORITIES

These comprise conciliation committees, conciliators, and the Federal Minister of Labour.

Conciliation Committees

These are public authorities, as the title to section 1 of the Administrative Order shows, and, as they are set up by the States and not by the Central Government, they are State authorities. They are instituted by the supreme State authority in agreement with the Federal Minister of Labour (C.O., section 1, subsection 8, para. 3).

Conciliation committees function either through the chairman alone (in the preliminary proceedings; see below) or as a court in which assessors assist the chairman (in the main proceedings).

It is provided in section 1, subsection 1, of the Order of 30 October 1923 that the headquarters and areas of the conciliation committees shall be fixed as far as possible with due regard to economic conditions. Since they are State authorities, the determination of their local competence is based on the political organisation of Germany as a federation of States. The latter have also to give consideration to economic conditions in defining the areas of committees within their own frontiers. In order that the institutions may be efficiently distributed without the number of committees actually increasing, it is provided in section 1, para. 1, of the Administrative Order that the supreme State authority may set up subcommittees for parts of their territory if the great distance from the headquarters of the committees or any other reason seems to justify such a step. In view of joint economic interests, exceptions may

¹ There is no dependable statistical evidence for this. Cf. MARTIN : *Schlichtungswesen*, pp. 107 et seq. According to Adolf WEBER : *Der Kampf zwischen Kapital und Arbeit*, 5th edition, 1930, p. 492, it is reported that at the beginning of 1925 69.5 per cent and in 1926, 72.7 per cent of the collective agreements contained provisions on conciliation machinery.

be made to organisations on the basis of State frontiers, and section 1 of the Administrative Order permits the formation of common conciliation committees for several States or parts of States¹. The new definition of areas need not be permanent, alterations being at any moment possible if the supreme State authority and the Federal Minister of Labour are in agreement on the subject; special committees can be created for particular branches of industry (e.g. agriculture).

Conciliation committees "consist of an independent chairman or chairmen and a number of assessors representative of employers and an equal number representative of employees" (C.O., section 1, subsection 1, para. 2). Every committee must have an independent chairman². According to section 22 of the Administrative Order, the supreme State authority appoints one or more impartial chairmen and the necessary deputies for an indefinite period, the numbers depending on the amount of business with which the committee has to deal; it should make these appointments after hearing the economic associations of employers and employees of the district, but is not bound to accept their proposals. Nevertheless, if the associations are in agreement, their nominees are refused only for administrative reasons³.

The only personal qualification required by the law of the chairman is that he shall be independent. He may therefore belong neither to employers' nor to workers' circles, nor may he be a representative of one of their industrial organisations⁴. As the chairman has an official position, he must possess the qualities necessary for its exercise, without an explicit provision to that effect being necessary. In any case, the competent authority uses its judgment in making appointments. The latter usually take the form of a private contract of employment for an indefinite period (A.O., section 2, subsection 2, para. 2). "The nature of conciliation and arbitration makes an appointment for an indefinite period advisable. The success of the proceedings depends so completely on the confidence of the parties, and the wage-fixing functions of an independent chairman are so important to the

¹ Little use has been made of this privilege.

² According to the Collective Contracts Orders of 1918, the appointment of a chairman was left to the assessors; but even under the old legal conditions there was actually no conciliation committee without a chairman.

³ Cf. DERSON, *op. cit.*, p. 447, and the Federal Minister of Labour's circular there cited (*Reichsarbeitsblatt*, 1924, p. 260).

⁴ The parties are specially protected from the danger of the chairman supporting one of them in the proceedings by the provisions concerning the exclusion or rejection of chairman on the ground of partiality. See below, pp. 259 et seq.

Government, that the existence of a non-removable official would have a detrimental effect on the system ¹. ”

The effect of appointments is that the chairmen and the deputy-chairmen enjoy the position of public servants during their term of office. While carrying out their duties, chairmen are also equivalent to officials in public law, though in private law they rank as employees only. They have all an official's rights (including the use of the official seal) and all his duties (personal responsibility).

Notwithstanding the rights and duties attached to chairmen in virtue of their office, the supreme State authority can at any moment remove chairmen or deputies, after hearing the opinion of the industrial associations of employers and employees (A.O., section 2). Such an order has, in public law, the immediate effect of suspending the official's exercise of his functions, while in private law it is equivalent to a notice to terminate his contract.

The other members of the conciliation committees are assessors representing either employers or workers. There is no limit to the number of assessors, on condition that employers and workers are equally represented. The determination of the number is left to the judgment of the supreme State authority, or to the body to which it has delegated the formation of the committee ². All assessors have the same right to vote (A.O., section 5, subsection 2).

While there are practically no limits to the choice of chairmen for conciliation committees, there are hard and fast rules for the nomination of assessors (A.O., sections 3 to 5). Firstly, they must all be German nationals, have completed their twenty-fourth year, and have their place of business, or, failing that, their residence or place of occupation, in the committee's area. They may be men or women. Naturally they must also be qualified to hold official positions.

Employers' assessors must be themselves employers, or persons whom the law regards as equivalent — members of boards of directors or legal representatives of corporate bodies (share companies, public companies, limited companies, registered companies), or of public or private associations (public commercial associations, “commandites”, etc.), members of supervisory boards (with the exception of the nominees of works councils, who are themselves workers), public officials as approved by the

¹ FLATOW-JOACHIM : *Die Schlichtungsverordnung vom 30. Oktober 1923*. p. 101. Berlin, 1924.

² DERSCH : *op. cit.*, p. 113.

competent central authority, managing directors or managers empowered to engage workers for an undertaking or part of an undertaking, or who have power of attorney, etc., and duly empowered representatives or employees of industrial associations of employers.

There are corresponding regulations for the nomination of workers' assessors. These may only be workers or duly empowered representatives or employees of industrial associations of workers ; public officials are not included. On the other hand, a worker does not lose his right to act as assessor because he is on holiday or temporarily unemployed. The law distinguishes between workers and salaried employees and provides that only workers shall act as assessors in disputes affecting workers, the same applying *mutatis mutandis* to salaried employees.

Assessors may be nominated by ordinary or extraordinary procedure ¹. In accordance with the former, the industrial associations in the committee's area send in lists of proposed assessors to the supreme State authority. There is no legal limitation of the number of names which may appear on such lists ; but the various districts and the principal industries, occupations and types of undertaking in the area should be represented. The choice of the authority responsible for appointment is confined to these lists of candidates, if they fulfil the legal requirements. In making its choice the supreme State authority has also to observe the principles governing the preparation of the lists.

If the latter are sent in too late or not at all, the law provides for an extraordinary procedure. The assessors may then be simply appointed by the supreme State authority. A circular issued by the Federal Minister of Labour ² instructs that this method is, in the interests of efficiency, to be utilised only after all the means of obtaining proposals have been exhausted, and in particular after due notice has been given to dilatory associations.

The supreme State authority appoints the assessors. Any person so appointed who refuses to serve without good reason may be fined.

The position of assessor is honorary, no fee being paid ³. They do not, like the chairmen, enjoy an official position. The principal characteristics of their position are the right and duty to be present at and to take part in the conciliation proceedings.

¹ DERSCH, *op. cit.*, pp. 460 et seq.

² *Reichsarbeitsblatt*, 1924, Official Part, p. 261.

³ Nevertheless their out-of-pocket expenses, fares, etc. are refunded.

Official discretion is not specifically laid down ¹. Non-compliance with requirements may lead to a fine or to loss of office. The supreme State authority may at any time remove an assessor from his office, but should first give him the opportunity to defend himself. There is no legal provision for objections, but an ordinary complaint against the administration or other appeal is allowable if in accordance with the State legislation. Assessors usually exercise their functions over a period of three years.

The procedure to be observed by the assessors, once appointed, is also laid down in the Orders ; they are enrolled in lists by the chairman, separate lists being drawn up for employers and employed workers and salaried employees and expert and branch committees. The chairman has then to select assessors from these lists for each sitting of the committee. He calls on two employers' and two workers' assessors according to his own judgment, irrespective of any order of precedence or other similar consideration ; but as far as possible he must take the characteristics of the individual dispute and the wishes of the parties into consideration. The assessors are bound to attend the sittings and to carry out their duties ; absence without justification or attempts to evade obligations may be punished with a fine.

Conciliators

These were introduced by the Order of 1923. In contrast to the committees, which are State authorities, the conciliators are Federal officials and are appointed by the Federal Minister of Labour after consultation with the supreme State authority concerned (C.O., section 2), either permanently for large industrial areas, or non-permanently for individual cases.

The conciliator alone is the authority (*Behörde*). The permanent conciliator may be a full-time or a part-time official. The non-permanent conciliator reserves instructions to act in individual cases. The position of the permanent conciliator is similar to that of the chairman of a conciliation committee.

Like the latter, the conciliator officiates either alone (preliminary proceedings) or in a conciliation court (main proceedings). For the formation of such a court, he calls as a rule on two employers' and two workers' assessors ; but he may also form a larger court. The assessors are not, as in the case of the committees, selected

¹ The obligation to discretion is inferred from the fact that assessors have an official position — decision of the Federal Minister of Labour of 23 February 1924 (IVa, 11103).

from lists, but are chosen at the discretion of the conciliator, though the circumstances of the case and the wishes of the parties have as far as possible to be taken into consideration. The same qualifications are required of them as of assessors on conciliation committees (A.O., section 7, para. 2)¹.

The Federal Minister of Labour

The Federal Minister of Labour is the third conciliation authority. He himself does not actually function in this respect, but may appoint special conciliators for individual cases². As will be seen, his special powers enable him to exert his guiding influence in the practical administration of conciliation and arbitration more especially in the direction of uniformity.

The Relations between the Conciliation Authorities

The Federal Minister of Labour supervises the administrative activity of the conciliators and the supreme State authority that of the committees, the chairmen being responsible for the latter. But while under supervision and responsible in respect of the institution of proceedings, both conciliators and committees are independent and not bound to act on instructions in the actual adjustment of disputes and the making of awards. Yet this freedom is limited. Efforts should be made to ensure that decisions do not vary one from another more than the difference in circumstances justifies, but that they follow the same principles and tend in the same direction all over the country. The Federal Minister of Labour is required to keep this consideration in view in selecting conciliators, in supervising their activity and in using his power to terminate their appointments. This practical influence is legally justified by section 7 of the Conciliation Order, which provides that he "may issue general guiding principles for the proceedings of conciliation committees and conciliators". But these, be it noted, are only guiding principles and in no way binding instructions³. The conciliation institutions are free with regard to their decisions and free to accept or reject these principles, and rejection does not deprive their awards of validity. Nevertheless, conciliators and chairmen of committees may not

¹ On the peculiarities concerning the creation of conciliation courts by a special conciliator in a new conciliation procedure according to a Decree of the President of the Reich of 9 January 1931, see below, p. 263.

² On the subject of the competence of conciliators and of the Federal Minister of Labour to declare awards binding, see below, p. 267.

³ DERSCH, *op. cit.*, p. 280.

deliberately ignore them, and the Federal Minister of Labour possesses, in his power of immediate removal from office, a practical means of ensuring that his principles shall be applied to conciliation. On the other hand, he may not intervene in the course of proceedings and so cannot give instructions with regard to the settlement of an individual case.

These guiding principles may deal with procedure or with the subject matter of disputes, but they cannot decide what has already been settled by Act or Order ; they can only supplement, explain, recommend. It is also in accordance with the law for conciliation authorities — the conciliators and committees of one or more neighbouring areas, for instance, — to meet and agree on guiding lines in order to ensure similar treatment in similar cases within a limited area.

Conciliation committees and conciliators have the same material competence, but while the latter usually deal with collective disputes which effect large industrial areas, or are of particular importance for the economic system. the former deal with local and less serious disputes. The conciliator may however undertake any case in person, even when it is already pending before a committee, as long as the latter has not given an award. The conciliator can thus prevent the committee from functioning ¹.

Neither committees nor conciliators may intervene in a dispute for the settlement of which an institution has previously been agreed upon ; and if applied to in such a case, they must refer it to the competent body, any decision they may make being otherwise invalid ².

Finally, conciliation institutions may exercise only the functions appertaining to them and no others ³.

Conciliation committees and conciliators are competent to deal with disputes if the workers concerned are employed in their area. If more than one committee or conciliator is thus competent, the authority which first began to deal with the case has precedence. The parties may by agreement appeal to an authority which is not properly competent, and such an agreement is deemed to exist if the parties negotiate before an authority without raising the question of non-competence.

¹ Conciliators alone are competent to give binding awards on overtime (section 6a of the Hours of Work Order).

² See below, p. 270.

³ This does not prevent conciliators or chairmen from functioning in cases in which they are not normally competent, if the public interest demands it. (A.O., section 8, para. 2.)

THE PARTIES

Qualifications

The purpose of conciliation and arbitration being to create a collective agreement (collective contract or works' agreement), the parties to the proceedings must be competent to conclude such agreements. The question of competence must be answered in accordance with the legislation on collective contracts and works' agreements.

The question of competence to conclude collective contracts has already been discussed in another publication of the International Labour Office¹. It was then established that on the employers' side employers and associations of employers, on the workers' side only "pure" associations of workers are competent to conclude such agreements; "pure" associations mean those composed solely of workers, which have as object the protection of the economic interests of workers and which are independent of employers. In recent years the question whether non-militant associations and associations of workers in one undertaking only — "works' associations" — are competent to conclude collective contracts. The Federal Labour Court has not given a definite negative answer to this question, to which jurisprudence can find no clear solution, but has made its reply dependent on whether the association concerned is in fact autonomous or not².

Syndicalist and anarchist trade unions are not competent to conclude a contract, since their principle of "direct action" is inconsistent with respect for a collective contract³.

The loss of such competence can be of very great importance. In practice there has arisen one much disputed question, namely, whether an employers' association can withdraw from proceedings and so escape a binding award by forbidding the conclusion of a collective contract through an alteration in its constitution or a vote at a general meeting. At first there was much doubt on this point, but recently theory and practice have agreed that an asso-

¹ *Freedom of Association*, Vol. III, Germany, pp. 60 et seq.

² Judgments of the Federal Labour Court of 29 September 1928, 10 October 1928, 10 April 1929 (*Reichsarbeitsgericht* 372/28, 648/28). See also SITZLER: *Die Frage der Tariffähigkeit im künftigen Tarifvertragsgesetz*, *Neue Zeitschrift für Arbeitsrecht*, 1930, cols. 77 et seq.

³ See the case of the "Free Workers' Union of Germany". Federal Labour Court, judgment of 31 May 1930 (508/29).

ciation can no more withdraw from conciliation proceedings than from the possibility of being sued — that is to say, it can only do so by ceasing absolutely to be an association.

This raises a further question — whether an association can evade conciliation proceedings by dissolution. This depends on whether a collective contract has already existed between the parties to the dispute ; if not, and a completely new agreement is to be made, in the present state of law no conciliation proceedings can be instituted against the dissolving association, if the dissolution is not purely nominal, for there can then be no second party to make the contract possible. This is also assumed, failing regulations to the contrary, if the dissolution occurs while a case is pending. Proceedings might also be initiated against individual employers if their associations were dissolved, though it is disputed whether a party to a collective contract can legally dissolve, as it thereby commits breach of contract. The majority of theorists deny this, but the Federal Labour Court confirmed it in a recent decision and declared invalid a contrary award permitting the extension and alteration of an existing contract ¹.

In the conclusion of works' agreements, on the one (the employers') side, a single employer and not an association is party, while on the other (the workers') side, section 16 of the Administrative Order lays down that the whole of the workers (or salaried employees) of an undertaking, represented by the duly elected members of the workers' (or salaried employees') council constitute the other party. The Order thus assumes that the ensemble of workers or salaried employees, and not their representatives, is the party. Industrial associations are also incapable of being parties to proceedings for the conclusion of a works agreement.

If one party to the proceedings is not competent to be a party to a contract, no award may be made, or if made it cannot be carried out, for no valid collective contract can be concluded. This is, however, not the case if the lack of competence is made good before the award is given — that is, if an association subsequently becomes qualified to conclude a collective contract. If the parties are competent to engage in conciliation and arbitration proceedings, either may require that negotiations for the conclusion of a collective agreement be opened before the institution once the formal conditions have been fulfilled. This is an inherent

¹ Judgment of the Federal Labour Court of 26 October 1929 (*Amliche Sammlung*, Vol. V, p. 1.).

right, independent of the consent of any person, in particular of that of the other party¹. It is also unaffected by any dispute which may exist between individual employers and workers who would be affected by the collective agreement to be made²; it is thus independent of the wishes of individual workers, and still more of the number of members of the association. The conciliation body may therefore not ask for information concerning such number, nor make its activity depend on it³. The number of contracts of employment affected by the agreement to be made is indifferent⁴, as is the existence of works collective contracts between works associations and individual employers⁴.

Representation of the Parties

It goes without saying that parties can only appear before the adjustment institution if they are actual persons. The only parties who fulfil this condition are individual employers, while associations and other corporate bodies must be legally represented. Section 15 of the Administrative Order lays down that industrial associations of employers or workers must be represented by the persons designated in their constitutions. The workers (or salaried employees) of an undertaking are thus legally represented by the works council or salaried employees' council, or (though not specified) by the works' delegate, who undertakes the representation of smaller undertakings. In undertakings where there is no permanent works representation the workers or salaried employers are legally represented by persons elected *ad hoc* by a majority of votes. A works council is represented (according to sections 28 and 38 of the Works' Councils Act) by its chairman or his deputy.

If a conciliation institution is appealed to by a party which is not represented in accordance with the regulations, the appeal is not valid and the institution may not take it up. If it does so, the proceedings have no validity; but in this case also validity may be acquired subsequently.

Other persons may also be given legal powers of representation; but the tendency of the law is to induce the parties themselves to participate as much as possible in the proceedings. In cases

¹ Decision of the Prussian Minister of Commerce and Industry of 10 March 1923, *Schlichtungswesen*, 1923, p. 92.

² Decision of the Prussian Minister of Commerce and Industry of 8 May, 1923, *ibid.* p. 127.

³ Ditto, 17 May 1923, *ibid.*, p. 127.

⁴ Federal Court judgment of 25 January 1929 (*Entscheidungen des Reichsgerichts in Zivilsachen*, Vol. 123, p. 174 et seq.).

where representation is inevitable, the representatives should be persons so well versed in the industrial and social circumstances that the proceedings may be completed as quickly and satisfactorily as possible. To this end, an industrial association may well be represented by its duly empowered employees and an employer by his manager or other official with power of attorney, or by an industrial association of employers. Works delegations, or, where they do not exist, the ensemble of workers or salaried employees of an undertaking, may be represented by industrial associations of workers. These associations, once empowered, can then be represented in their turn according to the above regulations. Persons other than those mentioned in the appropriate legislation are not permitted to represent parties to conciliation proceedings; barristers as such are excluded ¹.

Experience has shown that the best course is for the parties to negotiate themselves. In disputes limited to one undertaking, the chairman of the committee or the conciliator can require, under pain of fines, the personal attendance of the employer and of the persons representing the workers according to the Works Councils Act (A. O., section 15, para. 5, and section 16, para. 4). In the case of collective disputes which include more than one undertaking, the appearance of the parties or of their legal or constitutional representatives can be called for, but no power of enforcement is provided.

CONCILIATION AND ARBITRATION PROCEDURE

General Principles

The final object of conciliation and arbitration, according to the Conciliation Order, is assistance in the conclusion of collective agreements, and the procedure is adopted to this end.

Since the first object is to induce the parties to agree without pressure, the procedure must be as informal and elastic as possible. The methods of negotiation adopted by the conciliation body and the hearing of the parties are bound by no hard and fast rules. Free agreement between the parties must be constantly aimed at, from the opening of the proceedings until the announcement of the award, and even after it if the award is to be declared binding.

The general interest is also considerably concerned in the proceedings, which are therefore, for its and the parties' sake,

¹ Unless employees of an association.

public and direct ¹. There are however certain limitations. That proceedings are direct does not mean that only oral claims by the parties are accepted ; on the contrary, the awards must take account of all documentary evidence ; publicity is only provided for in the case of the Court proceedings immediately before the award, and even then the public may be excluded ; the preliminary proceedings, which are still to be discussed, are never public.

But the general interest is more concerned that conciliation proceedings should lead to a settlement than in the case of a private dispute before a Civil Court. The completion of the proceedings can not, therefore, be left to the whim of the parties, but must be officially guaranteed and they can under certain conditions even be instituted *ex officio*. In these circumstances, the conciliation body cannot limit its attention to the parties' version, but must use its judgment in elucidating all the facts bearing on the case, and in extending or limiting the subject-matter as it thinks fit. In this respect, the authority has complete liberty, but, as will be seen ² its power to collect evidence is limited.

The proceedings are free of costs and duties.

The Institution of Proceedings

The Conciliation Order (section 5, para. 1) lays down that conciliation bodies may act at the request of one party or on their own initiative. Proceedings may thus be opened in two ways, an application by a party being regarded as the normal method, while the institution should intervene on its own initiative only in exceptional cases — that is to say, when public interest demands such intervention (A.O., section 12, para. 2). The institution has to decide when this is the case, and to act accordingly.

An application has not to be in any particular form, nor is any minimum content laid down for it. The Works Councils Act (section 29, para. 3) provides that the works councils concerned must have dealt, or at least have tried to deal, with a dispute confined to one undertaking before it may come before a conciliation committee. In general, however, as the law now stands, parties are not obliged to engage in preliminary negotiations, though in practice an application to the conciliation body is only resorted to when all other possibilities have been exhausted.

The right to apply is limited if one such application has already

¹ For the special proceedings when an award is declared binding see below, pp. 264 et seq.

² Cf. below, pp. 261 et seq.

been made and withdrawn ; if the proceedings have led to a binding award (by arrangement or through arbitration) the case may not be dealt with a second time ; and if the award is not binding, the case may only be taken up again under exceptional circumstances, if all the parties are agreed or if the public interest requires it (A.O., section 12, para. 3). This limitation lapses if a new dispute arises ¹.

The parties have the right to apply to the conciliation authorities, but are not, in general, bound to do so. A Presidential Order of 10 November 1920 made an exception in the case of cessation of work in undertakings supplying the public with gas, water and electricity ; lock-outs and strikes are now permissible in such undertakings only when the competent conciliation committee has made an award, and three days have passed since its announcement. This Order is enforceable under penalty, any person who incites to an illegal lock-out or strike, or who causes an interruption in the activity of machinery, plant or works for such purposes being liable to imprisonment or a fine. A person undertaking an illegal lock-out is similarly liable (section 1 of the above mentioned Decree).

Further, it must be mentioned that section 55 of the draft Order of 1922 planned what was to a certain extent compulsory conciliation. It provided that the competent conciliation body must be called in before any lock-out, strike or other open conflict began, and proposed to make compulsory by law the principle of voting before strikes and lock-outs may be begun, which had previously been included in the constitution of the industrial associations. The reasons given in the preamble to this draft are still interesting, although it did not become law : " If the conciliation and arbitration system is to carry out its important function, the maintenance of industrial peace, it is necessary that the parties shall make use of the conciliation and arbitration institutions before they proceed to open conflict. It is not to be denied that the resort to such trials of strength is justifiable, and that they cannot be avoided in every case, even by the best conciliation institutions ; but it is just as certain that the interests of the public and of the parties themselves demand the use and the exhaustion of all the possibilities of peaceful settlement before recourse is had to open conflicts. This demand is by no means

¹ On the details concerning the creation of the conciliation courts and the award in this case according to the Decree of 9th January 1931, see below, p. 263.

new. On the contrary, provisions of the same sort may be found in the articles of association of the overwhelming majority of employers' federations, still more markedly in those of workers' trade unions of all types and in a very large number of collective contracts. . . . General recognition should be accorded to these voluntarily assumed duties ; the extension to all employers and workers of the legal obligations deliberately undertaken in so many collective contracts is justified by conditions and urgently necessary for the safeguarding of the economic system." ¹ This draft caused much discussion, and was freely criticised from various quarters ².

The chairman of the conciliation committee, or the conciliator, has the deciding voice in the institution of proceedings. The chairman must institute them if the necessary conditions have been fulfilled, the conciliator only if the case is particularly important. A date is then fixed, the parties are summoned, and the proceedings begin. The case is then described as pending.

Further conciliation proceedings may not then be instituted in respect of the same case ; and two other provisions serve the same purpose. Section 14, para. 2 of the Administrative Order lays down that the chairman of a committee or the conciliator may combine several pending cases concerning one dispute, if he considers that joint treatment is advisable. There are so many workers' associations that it may happen that several of them act on their own initiative for the purpose of achieving a collective settlement. An association has no actual right to be admitted to an already pending case to which another association of the same nature is party, but the desire to be so may be deemed an application to the institution, and the new proceedings may then be combined with the old. The Administrative Order goes even further, and attempts to avoid altogether the danger of several proceedings with the same object being instituted by prescribing (section 14, para. 1) that if several industrial associations are parties to a dispute on the employers' or workers' side, and one of them applies to a conciliation institution while direct negotiations are still going on between the others, the proceedings may be postponed at the request of one of the parties to them until the negotiations between the other associations have been completed, if immediate proceedings are not desirable.

¹ *Entwurf einer Schlichtungsordnung, Begründung*, pp. 51 and 52. Reichstag Records, No. 3760, first electoral period, 1921-1922.

² Cf. *Jahrbuch des Arbeitsrechts*, II, pp. 298 et seq., III, p. 255.

Combination entails joint proceedings and a single award. The parties face each other independently and the actions of either party are not binding upon and give no right to the other party, but may influence the award which is to be issued.

Postponement is determined by the conciliation authorities and is subject to appeal; the proceedings must recommence as soon as the voluntary negotiations are completed, and the chairman has *ex officio* to see that they then continue.

The Course of the Proceedings

General Considerations

Proceedings before a conciliation committee or a conciliator are divided into preliminary and main proceedings. The preliminary proceedings take place before the conciliator or chairman of the committee alone, the main proceedings before the whole court, including assessors (*Kammerverfahren*). Before the peculiarities of each type of proceeding are dealt with, certain regulations common to both should be mentioned.

The chairman fixes the date, and summons the parties, no particular formalities being required. The parties are obliged to attend and may be fined by the chairman for unexcused absence¹. The chairman opens and closes the proceedings, calls on the parties to speak, and sees that the case is fully and completely discussed. He should bring clarity to disputed points, by means of interrogation, hear witnesses and experts, adjourn sessions and/or announce the award — in short, control the whole proceedings within the limits laid down by the law.

Reporting is not provided for, nor is the keeping of minutes of the sessions. The chairman is required to maintain order during the proceedings, and may fine any person who causes disturbance (A.O., section 17). He is, however, not permitted to have such persons removed.

All these powers are included under the “measures for the control of the proceedings” as laid down under the Administrative Order (section 18). They, and the fines mentioned, are subject to appeal.

It is a principle of civil and criminal law that no man may judge

¹ There is no judgment by default, as in civil law. If both parties fail to attend, the proceedings cannot be opened, and must be adjourned or declared at an end, unless the case appears already sufficiently elucidated.

his own case. Persons who are not independent of a certain case are, therefore, not competent to judge it, and may be challenged by the parties on the ground of partiality. On the other hand, it is "very doubtful whether it is contrary to the nature of conciliation and arbitration proceedings to permit persons concerned in a dispute to act as chairman or assessors, for it often serves the purpose of such proceedings if persons not unconnected with a case co-operate in its settlement" ¹. The Administrative Order provides (section 13, para. 2) that employers and workers in an undertaking may not act as conciliators, chairmen, or assessors in disputes limited to that undertaking, if the parties do not expressly agree to such action. This disqualification works directly in virtue of the Order, without the parties having to insist upon it. Persons so disqualified may not partake in any official proceedings; should they do so, the proceedings are presumably not thereby rendered invalid, the parties having the right to object to their presence ².

The parties may thus challenge persons if they are disqualified by the law, or on the ground of partiality, though only chairmen of conciliation courts (i.e. conciliators or chairmen of committees ³) may be challenged for the latter reason; it is regarded as no objection for the assessors in a dispute on a collective agreement to be members of the associations which are parties to such agreement, and in any case, the chairman is free to select them as he thinks fit in accordance with their qualifications.

Challenge on the ground of partiality may not be based on general considerations, but only on facts connected with the individual dispute and calculated to justify lack of confidence in the impartiality of a person, such as financial participation in the undertakings concerned, relationship with the employer, etc. (A.O., section 13, para. 2). A challenge may, however, not be based on events which occurred in the preliminary proceedings.

The Preliminary Proceedings

The Conciliation Order lays down (section 1, subsection 5, para. 2) that the conciliator or the chairman of the conciliation committee has first of all to attempt alone to bring about the conclusion of a collective agreement. The case is not to be

¹ DERSCH, *op. cit.*: note 1 to section 13 of the Administrative Order, pp. 492 et seq.

² DERSCH, *op. cit.*, p. 495.

³ Not in the preliminary proceedings, when they function alone.

brought before the court until he has made such an attempt and failed, for "experience in the adjustment of disputes at home and abroad has shown that it is best for an impartial person first of all to attempt mediation... The form in which his mediation takes place must be dictated by the circumstances of the case; it is for instance possible that the disputing parties will not accept the informal proposals of the mediator, but may ask for the settlement of the dispute by means of a binding award. If the impartial person's attempts at mediation are not successful, he has then to call in assessors...."¹ The object of the preliminary proceedings is the conclusion of an agreement between the parties; no award may be made; the parties are obliged to take part; the proceedings are informal; and the only regulations are directness and privacy (A. O. section 20 para. 1). If the parties come to an agreement this has to be put in writing and signed by them or their representatives. In this way a collective agreement (collective contract or works agreement) is concluded. If on the other hand the preliminary proceedings do not lead to the desired agreement, a date should be fixed for the court proceedings, which may follow immediately if this is convenient.

The Court Proceeding (Kammerverfahren)

These can only be instituted after the preliminary proceedings have been unsuccessful. If the chairman discovers beforehand that one of the necessary formal conditions has not been fulfilled², he cannot allow the case to come before the court, but must declare the application invalid. He may also refuse the application on practical grounds, if there is in his opinion no sufficient reason for the conclusion of a collective agreement. But "the more doubtful the justification for the rejection of a case, and the more contestable the refusal of assistance in concluding an agreement, which is the whole function of conciliation and arbitration, the more advisable it is for the chairman not to reject the application himself, but to leave the decision to the court, after attempting mediation in the preliminary proceedings."³

If the conditions necessary for the holding of court proceedings are fulfilled, the chairman or conciliator has to select representatives of employers and workers as assessors in the manner already

¹ *Grundsätze des Reichsarbeitsministers, Reichsarbeitsblatt, 1923, Official part, p. 737.*

² Cf. above, p. 258.

³ FLATOW-JOACHIM, *op. cit.*, pp. 44 et seq.

described, and so form the court. The parties are then heard, the subject matter of the dispute is determined, and negotiations with the parties begin.

The parties cannot be compelled to negotiate, but it is as a rule in their own interests to do so, for even if one party refuses, an award may still be given as if that party were not present (A.O., section 21, para. 4).

Since an award must be just and therefore acceptable by both parties, the facts, from which a just award may be deducted, must be examined and explained. Both the chairman and the assessors may attempt to clear up doubtful points by means of questions. The court should make official investigation as far as is necessary, and it may instruct the parties to supply evidence or put well informed persons at its disposal for examination (A.O., section 21, para. 2) ¹. If the parties do not follow these instructions, the court has no means of compulsion. Such persons are neither witnesses nor experts in the usual legal sense, cannot be put on oath and have no claim to remuneration. The giving of evidence is free of all formality, and through it the court attempts to elucidate the truth in accordance with the principles mentioned. Rules of evidence, etc., are not admitted.

THE CONCLUSION OF THE PROCEEDINGS

The Award

If the parties come to a voluntary settlement, which is the first object of conciliation authorities, a collective agreement is concluded, put in writing and signed by the representatives of the parties; if not, a decision must be made. If it is found that certain of the legal conditions have not been fulfilled ², the proceedings must be suspended. If they are fulfilled an award must be made.

The award is the expression of a decision of the conciliation body. If not unanimous, it must be based on a majority of votes. Every member must vote under pain of a fine. If there are more than two opinions, none of which is supported by more than half the votes, an effort should be made to induce a majority to agree on one opinion. If this cannot be done the chairman alone

¹ Sometimes commissions of enquiry have been created.

² If for instance one party is not competent, or loses its competence, to conclude a collective agreement, or if a contract already exists

may decide (A.O., section 21, para. 5). In the earlier practice of conciliation and arbitration the chairman's vote was regarded as decisive in such cases, though at variance with that of the majority or even of all the assessors; but the Federal Labour Court decided in its judgment of 22 January 1929, which ended the Ruhr iron dispute, that this provision of the Administrative Order was contrary to the principle of majority voting contained in the Conciliation Order and was therefore invalid¹. If therefore there is no majority in favour of any one opinion, an award cannot be given and the proceedings must be dropped².

Events provoked by the economic depression in 1930, however, pointed to the advisability of amending the law in force in certain respects, and on 9 January 1931 the Federal President, in virtue of Article 48, para. 2, of the Federal Constitution, issued an Order respecting the settlement of disputes of public interest by arbitration³, the provisions of which are given below.

If, in the cases specified in Section 12, subsection 3, of the Administrative Regulations, the Federal Minister of Labour appoints a special arbitrator to conduct fresh arbitration proceedings which he considers necessary in the public interest, the arbitrator must, on the instructions of the Federal Minister of Labour, appoint two independent assessors in addition to the employers' and workers' representatives to form an arbitration board. If during the proceedings or at the voting the Chairman of the board finds it impossible either to obtain the co-operation of all the employers' and workers' representatives or to secure a majority vote, the arbitrator and the two independent assessors must issue an arbitration award by a majority vote in accordance with the provisions of the basic Order.

The second subsection of the Order lays down the reservation that the issue of the instructions mentioned above by the Federal Minister of Labour is subject to their being recognised as urgently necessary in the national interests and to the confirmation of this necessity by a decision of the Federal Government.

The Order was to remain in force only until 31 July 1931.

The award should be put in writing, signed by the chairman and announced. It is not provided that reasons for the award shall also be given, though it need hardly be pointed out that such a course is often valuable. The announcement is made orally in a session of the court whether the parties are present or not. It is then sent to the parties, usually with a notice as to the time limit for acceptance or the reverse.

The award consists in a proposal for the conclusion of a collective

¹ *International Survey of Legal Decisions on Labour Law*, 1929, Germany, No. 24.

² Legal theory is, however, inclined to contest this.

³ *Legislative Series*, 1931, Ger. 1.

agreement, and is equivalent to a written collective agreement if accepted by both parties or if it is binding in virtue of legal provisions (Works Councils Act, sections 75 and 80), or by previous arrangement between the parties (C.O., section 1, subsection 5, para. 4) An award is thus as a general rule not binding but requires the explicit acceptance of both parties within the determined period. If rejected, or if the period ends without further developments, it loses all legal force.

In any case an award must contain a complete draft collective agreement, so that, if it is not binding, it only requires the acceptance of both parties to become one. If it is not drawn up in this form, it can only be regarded as a recommendation such as is not even provided for in the Orders, and is equivalent simply to an adjournment of the proceedings.

An award may be a draft collective contract or a draft works agreement and may therefore contain anything which could form part of such agreements.

An award is not subject to appeal or other legal remedy¹.

BINDING AWARDS

The period of demobilisation (1918-1919) necessitated a rapid and efficient development of the conciliation and arbitration system ; and the difficult conditions of that time of transition also made it advisable to guarantee the execution of awards by State action, to substitute compulsory enforcement for voluntary acceptance by parties, and so to avoid dangerous conflicts. " Though it is obvious that the true object of conciliation is to bring about voluntary agreement between the parties and that compulsory conciliation and binding awards are contrary to its nature, without this compulsion the system will often, in consequence of human imperfection, and particularly in times of industrial and social unrest, prove a completely unserviceable weapon in the hands of the State and of the disputing parties ².

These considerations led to the inclusion of a declaration of the validity of awards in an Order of 4 January 1919 (R.G.B. p. 8). concerning the engagement, dismissal and remuneration of industrial workers during the period of economic demobilisation. This Order, and a similar one for salaried employees issued on 24 Janu-

¹ For examination of the legal validity of awards by the courts, see below, p. 269.

² Federal Court Judgment of 8 July 1924, *Juristische Wochenschrift*, 1924, pp. 1594 et seq.

ary 1919 (R.G.B. p. 100), were combined in an Order of 3 September 1919 (R.G.B. p. 500) and this in its turn was drafted into an Order of 12 November 1920 (R.G.B. p. 218) on the engagement and dismissal of workers and salaried employees during the period of economic demobilisation. This provided first of all for the possibility of making awards binding in individual disputes (concerning engagement and dismissal) in which arbitration was then possible. Declarations that awards in collective disputes were binding were recognised as permissible by the majority of jurists and allowed in practice, but were the object of heated argument ¹. The Demobilisation Commissioners were competent to issue such declarations.

The draft Order, too, provided for a declaration that an award is binding, for its authors considered that, in the light of experience, the existing machinery should not be abolished, but rendered more exact and reliable. Such a provision was not expected to endanger conciliation ; on the contrary, it was imagined that the very possibility of such a declaration would make the parties all the more ready to utilise the chances of conciliation offered them. Nevertheless, great restraint was to be used in its application ; an award was only to be declared binding if it seemed, after due consideration of the claims of each side, to be just, and if its enforcement was indicated by the needs of the general economic system ².

The possibility of issuing binding awards was retained in the Order at present in force. " This method and its efficiency have been the subject of no little argument during recent years ; but there is probably general agreement that for the immediate present — the Order is not intended to be permanent — this, the economic and social system's last line of defence, cannot be surrendered. But, as hitherto, the State should only use such extensive means of compulsion if an award is just, and if its enforcement will be to the economic and social advantage of the undertaking or occupation " ³.

The Order accords with these principles, and lays down (C.O., section 1, subsection 6) that a declaration that an award is binding shall only be given if these conditions have been fulfilled. One

¹ *Entscheidungen des Reichsgerichts in Zivilsachen*, Vol. 104, p. 171, and the decision in the *Reichsarbeitsblatt*, 1924, Official Part, pp. 359 et seq.

² Preamble to the draft Order, p. 65.

³ Principles issued by the Federal Minister of Labour, *Reichsarbeitsblatt*, 1923, pp. 737 et seq.

or both parties must have rejected a valid award given either by an official or voluntarily accepted conciliation body (specified in a collective agreement or other undertaking between the parties); the content of the award may be a draft collective contract or works agreement, and may deal with conditions of employment or with the legal relations between the parties. There is of course no occasion for a "declaration" if both parties accept the award, nor can one be made until the award has been explicitly rejected or the statutory interval has elapsed without answer (A.O., section 22). Further, all the former conditions mentioned above in respect of the procedure before the award must also be fulfilled, and in particular the parties must still have full competence as such at the time of the "declaration".

The use of this means of compulsion was contemplated in exceptional cases only. In principle, parties have complete freedom of contract (cf. Article 152 of the Federal Constitution); the first object of conciliation is agreement, and the State is only to intervene if the public interest requires it to do so — i.e. if the award is just and its enforcement economically and socially necessary. It was formerly the practice to regard such interests as implicated only if the general industrial system was in danger of suffering from the continuation of a strike or lock-out¹. Under the present system, public interest is defined more widely, and extends to both the economic and the social sphere; the general economic system need no longer be affected; it is enough for the interests of a single industry to be endangered². However, such danger must be established without a shadow of doubt, and, as the Federal Minister of Labour has often pointed out, such "declarations" can therefore be made only in certain very special conditions. "The introduction of declarations that awards are binding can only be as successful as is hoped if such State compulsion is the rare exception; and industrial circles must grow accustomed to regard it as such . . ." ³ They have nevertheless been frequently used in practice.

A "declaration" may be limited to certain disputed points if

¹ Federal Minister of Labour's Guiding Principles for Conciliation Procedure, II, No. 1, *Reichsarbeitsblatt*, 1920, p. 182.

² Federal Minister of Labour's decision of 3 March 1924, *Reichsarbeitsblatt*, 1924, p. 107. Cf. also DERSCH, *op. cit.*, p. 265.

³ Circular issued by the Federal Minister of Labour to conciliators on 30 January 1924. *Reichsarbeitsblatt*, 1924, Official Part, p. 127. The Minister then expressed his disapproval of the fact that it had in his experience become almost a rule for one party to claim that the award should be declared binding if the other rejected it, even in cases where not even the parties could imagine that the public interest required State intervention and enforcement.

these are not logically connected with the others. If they are so connected, previous agreement by the parties is required before such limitation may be made. The same applies to the alteration of an award in the process of declaring it binding (A.O., section 25).

A conciliator is competent to declare binding the awards of conciliation committees within his district or only slightly exceeding it ; other awards of the conciliation committees and those of the conciliators can be made binding only by the Federal Minister of Labour. Both Minister and conciliators perform this duty without assessors.

Proceedings should be instituted only by a public authority *ex officio* if the general interest demands it (A.O., section 23). As a rule, therefore, proceedings are opened and a " declaration " made on the initiative of a party which has accepted the award and is thus itself prepared for conciliation. If both parties reject the award, proceedings can only be opened by the State in the conditions described above. No special form or time limit is provided for an application for such a proceeding.

The first object of this procedure is once again to induce the parties to agree. The competent authority has to hear the parties with this object in view, or may delegate the function to some other body. This expression of views should be oral, circumstances permitting, but need not be so (A.O., section 24). If desirable, the competent authority may undertake further investigation into the facts of the case, and has the same powers to this end as the institution in the original conciliation proceedings. If the negotiations are unsuccessful, and all the necessary conditions are fulfilled, the award is declared binding. The declaration should be made in writing and sent to the parties (A.O., section 25) ; the Decree does not contain any provision as to the obligation to give reasons for the decisions ; it is not subject to appeal. If the competent authority refuses to issue such a declaration, the proceedings are closed. The only resort is then to open new proceedings, but the limitations mentioned above (A.O., section 12, subsection 3) also apply here.

The declaration that the award is binding replaces its acceptance by the parties (C.O., section 1, subsection 6, para. 3). It is, like the award itself, an administrative measure taken by the State, and creates a new legal position in a form binding on the parties ¹.

¹ Its legal nature is disputed.

It therefore amounts to a compulsory agreement (either collective contract or works agreement) which has the same force and legal validity as a freely concluded agreement. It lays down the conditions of employment to be included in any individual contracts made under it. The parties are not, however, bound to conclude such individual contracts of employment if they prefer not to do so.

THE ENFORCEMENT OF THE AWARD

Once the proceedings are finished and a collective agreement has been concluded, the dispute is over as far as legal theory is concerned ; but experience has shown that this is not always the case in practice, for the dissatisfied party frequently attempts to have its way by other means. Various questions are thus raised — whether new conciliation proceedings may be opened, whether the case may be brought before the courts of law, and what powers the party which desires to see the award enforced has against the recalcitrant party ¹.

As has been said, there is no legal remedy against awards, the right of complaint open to parties during the proceedings not applying to the contents of decisions. A further question of the same nature concerns the power of the authority itself to alter these decisions apart from any claim made by a party. Clerical, mathematical and similar obvious errors may be corrected at any time, but in other cases the following distinctions are made :

A non-binding decision may be altered if fresh proceedings are instituted ; but the possibility is limited by the fact that, as has been mentioned, such proceedings may not be instituted without the consent of all the parties, or unless public interest demands it (A.O., section 12, subsection 3). If the circumstances of the case have changed, the parties have an unlimited right to fresh proceedings. But if one party has already put in a claim for a declaration that an award is binding, the conciliation authority cannot act further without infringing the rights of that party ; in such circumstances, therefore, the award cannot be altered.

Awards which, through acceptance, legal provision (Works Councils Act, sections 75 and 80) or “ declaration ”, are binding, cannot be altered, for they create direct rights, and it is a recognised principle of public law that an administrative decision cannot be

¹ Cf. DERSCH : *Kommentar*, pp. 223 et seq., and *Neue Zeitschrift für Arbeitsrecht*, 1923, pp. 273 et seq., 409 et seq., 481 et seq.

altered by the authority which uttered it if rights have already been created by it.

The above covers the power of a conciliation authority to alter decisions which it has itself issued ; the distinction between this and the extent to which other conciliation authorities are bound by such decisions must not be forgotten. Awards which are binding, or have been declared so, and which create concrete rights, must be respected by other conciliation bodies in exactly the same way as all other existing collective agreements or contracts.

A further question concerns the extent to which other public authorities, and in particular the courts of law, are bound by awards and " declarations ".

The civil and labour courts have often to answer these questions. In doing so, they must remember that binding awards create rights by which the courts themselves are bound. For this reason, they may question neither the accuracy and justice of the award nor the accuracy and necessity of the " declaration ". To this extent the courts, like other authorities, must respect these administrative decisions. But it is not as easy to decide whether such decisions have any legal force. Only if the answer is in the affirmative can the courts be bound by them ; if not, they have as little force as a voluntary collective agreement which is legally invalid. The courts may thus, in the absence of definite legislative provisions on the subject, enquire into the legal validity of awards and of declarations that they are binding.

An award or " declaration " is rendered null and void by contravention of important regulations concerning the conditions to be fulfilled before proceedings should be opened, the rules of procedure and the contents of the decision itself.

In the first case, decisions are invalid if for instance, the dispute was not legally adjustable because no collective agreement was to be concluded ; if neither of the parties was present or correctly represented ; or if a party withdrew between the award and the " declaration ". Cases have also arisen in which successful pleas of non-competence have been made — for instance, when a conciliation body has been named in a collective agreement and the official institution has nevertheless intervened, or when the latter was not competent, because of the nature of the dispute or the locality in which it took place ¹.

¹ DERSCH, *op. cit.*, p. 238 ; FLATOW-JOACHIM, *op. cit.*, p. 146 ; the Federal Court decisions of 8 July 1924 (*Reichsarbeitsblatt*, 1924, pp. 358 et seq.) and 10 Oct. 1924 (*Juristische Wochenschrift*, 1925, p. 225).

Again, the decisions are invalid if the procedure has not been correct — for instance, if a decision is made before one of the parties has been heard or if a party does not attend or is not summoned and an award is given ¹; if the conciliation court was wrongly constituted, has no independent chairman, or was not composed of equal numbers of employers' and workers' assessors; if more or less than two assessors (from each side) sat on the conciliation committee without the parties' consent; or if the chairman gave an award against the opinion of the assessors ². On the other hand, decisions made with the assistance of disqualified or challenged assessors, or by a conciliation court which is not competent according to the internal organisation of the system, are not invalid.

Finally, a decision is invalid if its content is not in accordance with the law — for instance, if it infringes an existing collective agreement ³.

A regulation which concerns "declarations" only is that they must be based on valid awards, for they merely take the place of acceptance by the parties. If a decision is null and void, so is a declaration that it is binding ⁴.

If the court rules that a decision is invalid, the position is the same as if no proceedings had taken place, and there is no obstacle to the institution of fresh proceedings.

If one party accepts an award and the other refuses to carry it out, the means of enforcement at the disposal of the former belong to collective contract law and cannot be considered here. It need only be mentioned that the recalcitrant party is guilty of breach of contract and can be sued before the labour court for damages, and that an employer or worker can, by application to the same court, obtain enforcement of the terms of a contract of employment based on a binding award (and therefore on a collective agreement).

¹ Cf. FLATOW-JOACHIM, *op. cit.*, p. 146.

² Cf. also p. 262. The Federal Labour Court, however, has laid down that this is to be understood from the award itself. Cf. also the Federal Labour Court's judgment of 24 April 1929 (*Amtliche Sammlung*, Vol. 4, p. 81); *International Survey of Legal Decisions on Labour Law*, 1929, Germany, No. 24.

³ Cf. above p. 251 and the Federal Labour Court's judgment of 2 Feb. 1929 (*Amtliche Sammlung*, Vol. 3, p. 231); *International Survey of Legal Decisions on Labour Law*, 1929, Germany, No. 16.

⁴ Cf. the Federal Court's judgment of 7 March 1922 (*Juristische Wochenschrift*, 1922, pp. 1719 et seq.), and the judgment of 8 July 1924 cited above.

§ 3. — Statistics

DEVELOPMENT OF CONCILIATION AND ARBITRATION DURING THE YEARS 1924 TO 1930 ¹

I

Year	Number of disputes settled by means of conciliation procedure		Total number of disputes settled by means of conciliation procedure										Total of awards					
			Number of disputes settled during preliminary procedure etc., or otherwise			Number of disputes settled by agreement			Number of disputes decided by awards				Number of awards accepted by the parties		Number of awards rejected			
			Before the conciliation boards		Before the conciliators	Before the conciliation boards		Before the conciliators	Before the conciliation boards		Before the conciliators	Before the conciliation boards			Before the conciliators	Before the conciliation boards		Before the conciliators
	By the conciliation boards	By the conciliators	4	5	6	7	8	9	10	11	12	13	14	15	16	17		
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17		
1924	16,480	2,095	4,947	590	1,211	449	9,460	1,102	4,492	—	4,968							
1925	12,360	1,058	2,743	255	1,162	123	7,686	666	3,177	275	4,239			390				
1926	4,653	390	1,275	78	488	49	2,544	263	919	112	937	349	144	96	42	12		
1927	7,792	644	1,812	107	951	118	4,499	411	1,782	160	1,621	625	242	138	66	31		
1928	7,548	489	1,768	120	786	65	4,365	301	1,603	110	1,694	582	263	102	50	36		
1929	6,683	426	1,874	133	582	63	3,705	222	1,119	83	1,741	448	183	83	40	6		
1930	3,760	257	1,136	67	334	31	1,957	147	520	43	892	296	92	53	44	4		

¹ Cf. *Reichsarbetsblatt*, 1930 (II), pp. 46, 47; 1931 (II), pp. 372, 373; 1932 (II), p. 138.

DEVELOPMENT OF CONCILIATION AND ARBITRATION DURING
THE YEARS 1924 TO 1930 ¹

II

Year	Number of requests to declare binding the awards settled		Total number of requests to declare binding the awards		
	By permanent conciliators	By the minister of the Reich	For which an award was arrived at	Which were declared binding	Which were rejected
1	2	3	4	5	6
1924	3,193	366	1,365	839	1,070
1925	2,965	241	1,372	707	1,127
1926	1,022	116	480	315	343
1927	1,722	183	936	540	429
1928	1,656	158	901	434	479
1929	1,385	96	814	274	393
1930	745	81	385	205	236

INDUSTRIAL DISPUTES IN GERMANY ²

I

Year	Number of		Maximum number of workers simultaneously affected by strikes and lock-outs ¹	Number of working days lost by workers affected by strikes and lock-outs ¹	Average number of working days lost through each worker affected by strikes and lock-outs
	Industrial disputes	Undertakings			
Exclusive of industrial movements of a political character					
1920	4,392	48,288	1,561,735	17,702,800	11
1921	4,788	57,758	1,540,351	26,316,390	17
1922	5,201	52,783	1,969,263	28,894,434	15
1923 ²	(2,162)	(28,105)	(1,769,386)	(14,138,821)	(8)
1924	2,012	29,218	1,634,317	36,023,143	22
1925	1,766	25,214	758,071	16,855,856	22
1926	383	2,949	99,227	1,271,884	13
1927	871	10,480	493,680	5,936,006	12
1928	763	8,082	723,415	19,481,258	27
1929	441	8,606	223,878	4,372,907	20
1930	366	3,507	213,931	3,816,971	18
1931 ³	497	4,994	177,643	1,990,000	—

¹ Exclusive of forced unemployed.

² Incomplete figures (figures for the Rhinelands and Westphalia are missing as a result of occupation of the Ruhr district).

³ Provisional figures, cf. *Reichsarbeitsblatt*, 1932 (II), p. 138.

¹ Cf. *Reichsarbeitsblatt*, 1931 (II), pp. 372, 373).

² *Reichsarbeitsblatt*, 1930 (II), pp. 178, 179; 1931 (II), p. 179; 1932 (II), pp. 78, 79.

II

Number of industrial disputes	Number of				Number of working days lost by each worker affected by strikes or lock-outs	Number of workers affected by strikes or lock-outs in the interested undertakings
	Undertakings	Disputes	Workmen affected by strikes or lock-outs	Days of work lost ¹		
Strikes ²	1926 .	339	2,160	60,369	869,297	14
	1927 .	759	8,144	232,704	2,945,815	13
	1928 .	691	5,672	328,529	8,519,713	26
	1929 .	431	7,879	150,745	1,852,370	12
	1930 .	345	3,241	208,444	3,602,222	17
	1931 ³	—	—	135,983	1,558,817	—
Lock-outs	1926 .	44	789	44,342	456,012	10
	1927 .	112	2,336	270,513	3,097,883	11
	1928 .	72	2,410	451,862	11,768,498	26
	1929 .	19	928	84,798	2,637,500	31
	1930 .	29	269	16,539	333,955	20
	1931 ³	—	—	41,660	470,190	—

¹ Inclusive of forced or unemployed.

² Account is not taken of political strikes.

³ Provisional figures, cf. *Reichsarbeitsblatt*, 1932 (II), p. 138.

§ 4. — Summary

It is characteristic of the German system, first that conciliation and arbitration proceedings are combined, and secondly that these proceedings are distinct from declarations that awards are binding. The German system is not one of compulsory conciliation in the sense that every collective dispute is subject to it. A party is free to decide whether it will bring a dispute before the conciliation authorities or have recourse to an open conflict. But once a dispute has been brought before an authority, there can be no withdrawal. Strikes and lock-outs are not prohibited during the proceedings, but there are certain restrictions, which have been described above. It is, therefore, possible for conciliation proceedings to be instituted *ex officio* against the will of the parties, and this State intervention is required in the case of disputes in public utility undertakings. As a rule, however, a strike or lock-out begun during proceedings is not an infringement of the law until an award has been accepted by the parties or declared binding. Such action is then equivalent to breach of contract.

The German system thus hinges on the declaration that an award is binding, which has therefore borne the brunt of discussion

and criticism. The most important charges brought against it are that the parties rely upon it and so evade responsibility for their actions, while the State, on whose shoulders this responsibility falls, cannot be sufficiently informed of economic conditions and is guided mainly by political considerations. It is not surprising that the principal opponents of the " declaration " are to be found among the employers ; they do not, in their official expressions of opinion, attack either conciliation itself or the possibility of a declaration, in particularly important cases, that an award is binding ; they limit their hostility to the too common use of such declarations. A proposal for an amendment of the Conciliation Order, published by the Federation of German Employers' Associations in April 1929, gives this point of view its clearest expression. It describes conciliation simply as the maintenance of industrial peace by assistance in the settlement of collective disputes concerning conditions of employment, and emphasises the predominant importance of voluntary conciliation between the parties. Its proposals run as follows :

State institutions should be able to intervene only on the application of both parties, if no other institution has previously been agreed on by them, or *ex officio* if the interests of the country require it.

Awards should be made by simple majority of votes, and be accompanied by a written statement of the considerations which led to it.

A declaration that an award is binding should be possible, but only in certain narrowly defined cases, namely : (1) in collective disputes in undertakings of vital importance, (2) in collective disputes which have such a serious effect on German national economic life that the existence of the general public is in danger. " Undertakings of vital importance " should be more clearly defined in a Federal order, to be issued in agreement with the Federal Council and the industrial associations of employers and workers concerned. In particular, necessary work connected with agriculture (sowing, cultivation, harvest and cattle-rearing) should be so described.

A Federal arbitration body should be competent to declare awards binding, and should deal with cases on application by the parties or on instructions from the Federal Government. It should comprise a chairman, armed with judicial independence and the rights of a public official, several impartial persons without the right to vote, and employers' and workers' assessors in equal

numbers. A two-thirds majority should be necessary for all its decisions.

On the workers' side, the free trade unions expressed disapproval of compulsory conciliation, in particular as part of any definitive settlement, when the Conciliation Order was introduced, for they were not prepared to surrender the right to strike as a final weapon¹; but the existing system is now accepted by all trade unions of every type, if only for the moment².

In 1929 the Federal Minister of Labour summoned the representatives of employers' and workers' associations to discuss a new conciliation system, but the meeting did not lead to any practical results. Since that time the whole question has fallen into the background in face of the more urgent problem of unemployment.

SUPPLEMENTARY NOTE

After the expiry on 31 July 1931 of the Order mentioned above³ for the settlement of disputes of public importance submitted to conciliation and arbitration procedure, the Federal Government was compelled, for the purpose of settling the next serious dispute in the Ruhr coal mines, to issue on 27 September 1931⁴ a new Order embodying the same provisions and valid until 10 October 1931.

In the same connection another Order was issued on 30 September 1931,⁵ which includes the important provision that in confirming the binding force of arbitration awards issued in virtue of the Order of 27 September 1931 the Federal Minister of Labour may, contrary to the law in force, alter the period of validity of the settlement proposed by the arbitration award without the consent of the parties concerned. Since this last Order applies only to arbitration awards issued in virtue of the Order of 27 September 1931, which is not at present in force, the Order of 30 September is also without validity for the time being. Both Orders make it evident that in a particularly serious case it was

¹ Decision of the General Federation of German Trade Unions of 18 March 1924, *Gewerkschaftszeitung*, 1924, pp. 92 et seq. and p. 333.

² Cf. speeches by NÖRPEL, OTTE, ROESSIGER, BROST, SCHWEITZER, SCHUCKERT at the Eleventh Congress of the Association for Social Reform.

³ See above, p. 263.

⁴ *Legislative Series*, 1931, Ger. 8A.

⁵ *Ibid.*, 1931, Ger. 8B.

considered necessary in the interests of the community to go beyond the possibilities of State intervention provided under the general conciliation and arbitration regulations of 30 October 1923.

Finally, new and very responsible tasks have devolved on the German conciliation and arbitration authorities as a result of the labour clauses of the fourth Emergency Decree issued by the Federal President on 8 December 1931¹ for the safeguarding of industry and the national finances and the preservation of civil peace. This Decree aimed at reducing all wage rates fixed by collective agreement from the level current on the day on which the Decree was published (9 December 1931) to the level of 10 January 1927, with effect from 1 January 1932.

The parties to the agreement were to fix the new wage or salary rates prescribed by the Decree in a written annex to the collective agreement before 19 December 1931. In the event of failure to reach agreement, they must inform the competent conciliation officer for the district, or, if the collective agreement extended beyond the jurisdiction of one conciliation officer, the Federal Minister of Labour, who in this case would appoint a special conciliator. Unless the parties agreed upon a settlement in the meanwhile, the conciliator would then fix the wage or salary scales with binding force, in accordance with the principles mentioned above. In so doing, he might make suitable allowance for any alterations in the wage or salary system that had taken place since the conclusion of the agreements current on 10 January 1927; and he was also empowered, where no collective agreements existed on 10 January 1927, to increase or decrease the standard rate of reduction of 10 or 15 per cent. if he considered this to be unavoidable on social and economic grounds in view of the general level of wages and salaries on 10 January 1927. Finally, he also had the right to alter any of the clauses of collective agreements between the parties (wage agreements, covering agreements and others) that in his opinion were connected with wages and salaries, in the same way as the parties themselves. In order to secure a period of tranquillity, the Emergency Decree prescribed that the validity of the collective agreements with the reduced wage and salary rates should be prolonged until 30 April 1932. The conciliator might at his own discretion prolong their validity for any further period up to 30 September 1932.

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Das Arbeitsrecht, Arbeitsrecht und Schlichtung, Reichsarbeitsblatt, Soziale Praxis, Kölner sozial-politische Vierteljahresschrift, die Arbeit, Gewerkschaftsarchiv, der Arbeitgeber, der Kaufmann in Wirtschaft und Recht, Materialblätter für Wirtschaft und Sozialpolitik.

FREE CITY OF DANZIG

In accordance with Article 104 of the Treaty of Versailles, the Free City of Danzig with adjacent territory forms a Customs Union with Poland. Moreover, a treaty concluded in 1921 includes the territory of Danzig within the Polish system of economic administration. The Free City of Danzig is placed under the supervision of a High Commissioner appointed by the League of Nations. It has a Diet (*Volkstag*) and a Senate elected for four years.

At the beginning of 1928 the total population of the Free City was 390,000, and that of the capital 280,000. The territory has 320 communes, most of them rural.

The voluntary settlement of collective labour disputes forms the subject of a Conciliation Act of 4 February 1930¹ and an Order of 4 March 1930². The more important provisions of the Act are taken from the German Conciliation Order of 30 October 1923³ with some minor alterations necessitated by the special economic and administrative conditions of the Danzig territory.

In the first place the Act provides for the institution of a Conciliation Committee with its headquarters at Danzig, consisting of an impartial chairman (*unparteiischer Vorsitzende*), a number of assessors representing employers and an equal number representing workers. They are appointed for three years. The members of the Committee are appointed by the Senate, after consultation with the economic associations of employers and workers. The choice of assessors must provide for equitable representation of the different districts and trades. The Senate may even set up special boards for trades in which, by reason of special conditions or the frequent occurrence of disputes, such action may seem advisable. Detailed provisions define the procedure governing the appointment of assessors, who must be citizens of Danzig and have attained the age of twenty-five years.

¹ *Legislative Series*, 1930, Danz. 1.

² *Gesetzblatt für die Freie Stadt Danzig*, 1930, No. 5 and No. 8.

³ *Legislative Series*, 1923, Ger. 6.

Persons who refuse without sufficient reason to serve are liable to a fine.

Under the Act the Senate must appoint special conciliators if so requested by the parties.

Conciliation committees and conciliators take action at the request of one of the parties or on their own initiative. They endeavour to bring about the conclusion of a collective agreement, and if they fail the matter is discussed before the Arbitration Board. The Act, moreover, sets up a higher body for mediation, the Arbitration Board (*Schlichtungskammer*), consisting, according to circumstances, of the chairman of the Conciliation Committee, together with two assessors representing employers and two representing workers, or of the conciliator with an equal number of assessors for employers and workers. The Board in its turn endeavours to bring about an agreement between the parties; if it succeeds, a report is drawn up and signed by the parties. If no agreement between the parties is reached before the Arbitration Board, it takes a decision by an ordinary majority vote and delivers an award, which must be signed by the chairman and communicated to the parties for their acceptance.

Under certain conditions, when a dispute involves important economic and social interests, an arbitration award that has not been accepted by the two parties may be declared binding under the Act.

AUSTRIA

§ 1. — Economic Background and Development

The territory of the Austrian Federal Republic, as fixed by the Treaty of St. Germain-en-Laye of 10 September 1919, covers an area of 83,833 square kilometres and has a population of six and a half million (97 per cent.) Germans and 200,000 (3 per cent.) Slovenes, Czechs, Croats and Hungarians.

Austria is a highly industrialised country. According to the census of 1920, about 900,000 (13 per cent.) of its inhabitants were employed in subordinate positions in trade and industry. If, as experience justifies, it is calculated that on an average every subordinate worker has to support two dependants, it is evident that the provisions of labour legislation governing economic, health, and social conditions are of vital importance to 40 per cent. of the total population of Austria.

Since the war, the trade union movement in Austria has made tremendous progress. At the end of 1928, the membership of the "free" (Social Democratic) trade unions was 766,168 (598,699 men and 167,469 women), that of the Christian trade unions 100,087 and that of the Nationalist trade unions (1927) 47,877. The membership of the latter is largely recruited from among salaried employees; the employees in transport and communication services, for instance, belong for the most part to these unions (51 per cent.).

The conditions of employment of nearly all Austrian workers and salaried employees, with the exception of agricultural workers, are regulated by collective agreements. This is unreservedly the case in all the more important branches of industry. The number of workers and employees covered by collective agreements exceeds the membership of the trade unions.

This fact is primarily attributable to the existence of what are called "general rules" (*Satzungen*). This term signifies a collective agreement which the conciliation board, at the request of a trade association or a public authority, has declared binding in respect of all conditions of employment substantially the same as those regulated by the collective agreement concerned.

According to the amendments to the Act of 18 December 1919, on the establishment of conciliation boards and on collective agreements, contained in the so-called "Anti-Terror" Act of 5 April 1930¹, all workers employed in the undertaking of an employer who is a party to a collective agreement are subject to the provisions of this agreement even if they themselves are not parties to it. The works council, however, has the right to raise an objection to this extension of the scope of the agreement.

Before the war, all disputes arising between employers and workers out of conditions of employment were settled by the courts, primarily by the industrial courts². In the case of agricultural and forestry workers, the administrative authorities were also competent under certain circumstances. There was no machinery for conciliation and arbitration. As, however, conditions were progressively altered in favour of the workers by the immense transformation wrought in Austrian economic life by the war, and as the progressive increase of military dictatorship in industry transformed the free contract of employment more and more into a compulsory relationship, demands were put forward more and more insistently in labour circles for the establishment of a body competent to hear complaints. As early as March 1915, the Austrian Metal Workers' Federation had submitted a petition to the Ministry of War demanding the institution of such a body. At the end of July in the same year, an appeal committee for Lower Austria was set up in Vienna with the consent of the Minister of War. But this was quite inadequate sensibly to improve conditions which were already becoming intolerable, since the territorial jurisdiction of the committee was too limited.

In November 1916, the first German-Austrian Labour Conference was held in Vienna. The most important point in the unanimously adopted resolution was a demand for the institution of appeal committees and wage boards. After lengthy negotiations, these were finally set up by the Imperial Decree of 18 March 1917 "respecting the regulation of wages and conditions of employment in undertakings of military importance". The greatest and, in consideration of war-time circumstances, the most important respect in which this Decree marked an advance on the appeal committees mentioned above was that the boards

¹ *Legislative Series*, 1930, Aust. 1.

² Industrial courts have existed since 1869 and were originally more in the nature of arbitration courts. Recourse to them was voluntary. Since 1884, however, the jurisdiction of the industrial courts has been compulsory.

were entitled to issue binding decisions, applicable to both parties, employers and workers alike. In practice, although the appeal committees frequently issued decisions favourable to the workers, their activity naturally often gave rise to disappointment, and they never succeeded in obtaining the workers' confidence.

At the beginning of November 1918, the German-Austrian National Assembly, on the proposal of its Executive Committee, adopted a programme worked out by a committee consisting of three workers' and three employers' representatives, which included a demand for the establishment of conciliation boards to replace the appeal committees, which were to lapse at the end of the war. By an Administrative Instruction of 4 November 1918, the German-Austrian National Council provided that during the period of transition to normal industrial conditions the appeal committees should assume the functions of conciliation committees. Their competence was extended considerably beyond that of the original appeal committees, which had dealt only with workers covered by the war Emergency Act. In principle, it extended to all industries, trades¹, undertakings under State monopoly, mines, railways and shipping undertakings, the periodical press and home work. The military chairmen of the appeal committees were replaced by judges nominated by the Minister of Justice.

Although, on the one hand, the sphere of action of the conciliation boards was much wider than that of the appeal committees, their efficacy was limited by the fact that they lacked all powers of coercion. Acceptance of their awards by the parties was voluntary, and there were no means of compelling them to submit to the decision.

The Order issued for the transition period was replaced by the Act of 18 December 1919 respecting collective agreements and conciliation boards² mentioned above, which established the conciliation boards that had evolved out of the military appeal committees on a new basis. The scope of their jurisdiction was extended. During the transition period the conciliation boards had been set up only for the settlement of disputes arising out of conditions of employment³. They were now invested with

¹ In Austrian parlance the term "trade" (*Gewerbe*) is used to describe small industries, while "industry" (*Industrie*) signifies the large-scale transforming industries.

² *Legislative Series*, 1920, Aust. 22.

³ By these collective disputes arising out of conditions of employment was meant disputes about interests, and, in particular, disputes arising in connection with the conclusion or renewal of collective agreements.

judicial powers as well, and are therefore competent to settle disputes arising in connection with the functions of works councils ; to act as wage boards, since at the request of a public authority or of one of the parties they have to assist in the conclusion or alteration of wage agreements (section 12), or to initiate proceedings in disputes arising out of the interpretation of a collective agreement (section 15, subsection 1). In the two latter cases, therefore, the chairman may not intervene *ex officio* at his own discretion, as he may for the settlement of collective labour disputes (Part II of the Act). Further, it is the duty of the conciliation boards to register collective agreements and issue the so-called general rules, i.e. declare binding, in whole or in part, for all conditions of employment substantially the same as those governed by the agreement, any collective agreement which has acquired predominant importance.

§ 2. — The System in Force

STATUTORY CONCILIATION AND ARBITRATION MACHINERY

Conciliation Boards

The function of the conciliation boards is, in the first place, purely that of mediation and conciliation, similar to the function of a justice of the peace. They are administrative and not judicial bodies.

The parties are in no way bound to enter into negotiations before the conciliation authorities. At the request of one of the parties only, the dispute may at once be submitted to the competent court (usually the industrial court) or to an arbitration body, in so far as one exists or has been provided for under a collective agreement, which takes precedence of the conciliation board in every case.

(a) Competence and Organisation of Conciliation Boards

There are in Austria twelve conciliation boards, set up by Administrative Instructions of the Ministry of Social Affairs. The conciliation boards are under the supervision of a Supreme Conciliation Board attached to the Federal Ministry of Justice.

The conciliation boards are competent to settle disputes arising out of the conditions of employment and were primarily intended

for the settlement of collective disputes. The distinction between collective and individual disputes is, however, less sharply drawn than in Germany, for instance, in that, as was pointed out in the Preamble with which the Government introduced the Conciliation Boards Bill, a particular dispute may raise points of principle of importance for the future regulation of labour conditions.

Conditions of employment for the purposes of this Act are as follows :

- (1) conditions of employment of assistant workers in accordance with section 73 of the Industrial Code, i.e. without distinction of sex or age, assistants (commercial assistants, journeymen, waiters, drivers, etc.), factory workers, apprentices and workers employed as subordinate assistants in trades ;
- (2) conditions of employment in undertakings under State monopoly (salt, tobacco, fire-arms and explosives), undertakings for the printing and sale of the periodical press, undertakings for public entertainments, and exhibitions, and health and curative institutions ;
- (3) conditions of employment in undertakings which are excepted from the provisions of the Industrial Code because they are not carried on for profit ¹ ;
- (4) conditions of employment and service in undertakings covered by the Salaried Employees Act of 11 May 1921 ;
- (5) conditions of employment and service in mining, including the works ;
- (6) conditions of employment and service in industries subsidiary to agriculture ;
- (7) conditions of employment of drivers of private vehicles (Act of 20 December 1928) ;
- (8) conditions of service in undertakings the occupier of which is a public corporation, unless they are governed by service regulations ;
- (9) conditions of employment of home workers for whom no central home work commission exists ².

¹ E.g. undertakings run by local authorities but not with a view to profit.

² There are at present seven central home work commissions for the following occupations : manufacture of underclothing, clothing, shoes, artificial flowers and ornamental feathers, knitted goods, and home weaving, in Vienna, and a central home work commission for the knitting industry in Bregenz.

In contrast, however to the provisions of the Administrative Instruction of 4 November 1918 for the transition period, the conciliation boards are not competent to deal with conditions of employment in railway and shipping undertakings¹.

The members of the conciliation boards are appointed by the Minister of Social Affairs. They must comprise an equal number of employers' and workers' representatives. The trade associations concerned are entitled to nominate candidates for appointment and must submit their lists within a time limit to be fixed for each case.

The term of office of members and substitute members is three years. Refusal to accept office or resignation is allowed only for serious reasons². Before taking up office, the members of the board must solemnly pledge themselves to perform their duties conscientiously and impartially. A member or substitute may be dismissed from office if such a change takes place in his occupation that he is no longer qualified to protect the interests of the trade group he represents. He may also be dismissed if circumstances arise or become known which disqualify him for appointment to judicial office or if he is guilty of gross misconduct or persistent neglect of his official duties. The chairman and vice-chairman of the conciliation board are nominated by the Minister of Justice, in agreement with the Minister of Social Affairs, without limit of time and subject to recall. Although this is not expressly specified in the Act, the person appointed as chairman is always a judge or some other legally trained person.

The conciliation board acts through committees, the number of which is fixed by the chairman, who must also nominate the chairman of the committee, usually his deputy. Each committee must contain an equal number of members and substitutes from the employers' and workers' panels respectively. The committees are set up for particular groups of labour conditions or special questions under consideration. The chairman may, at his discretion, set up special committees elsewhere than at the seat of the conciliation board, which must adopt the same procedure and enjoy the same official powers as the conciliation board itself.

The members and substitutes must belong to the same trade group as the parties, or at least to a kindred group. If the number

¹ Under section 1 (*d*) of the Industrial Courts Act of 1922, such disputes must be submitted to the industrial courts.

² A disciplinary fine of up to 200 schillings may be inflicted by the chairman on members who neglect their official duties.

of employers' and workers' representatives on a committee is unequal, the extra members of the larger group, in order of age beginning with the youngest, are not entitled to vote. The chairman votes last. Decisions are taken by an absolute majority.

(b) *Procedure of the Conciliation Boards*

Application for the opening of conciliation proceedings in a dispute arising out of conditions of employment may be made by :

- (1) one of the parties concerned (employers or workers).
If the dispute has arisen for instance, out of the interpretation of a collective agreement, the trade association that concluded the agreement is a party ; if, on the other hand, the dispute turns on claims under private law of individual persons bound by a collective agreement, the trade association may demand the initiation of conciliation proceedings, but the party is only the person whose national interests are affected by the award, and the arbitration award can become binding only if it is accepted by the person concerned ;
- (2) an authority (e.g. local authorities, police authorities, political district authorities, etc.) ;
- (3) the chairman may, at his own discretion, intervene *ex officio*, notably in strikes and lock-outs of considerable magnitude, and particularly if, through his own observation or by some other means (e.g. notification by a trade association or announcement in the daily press), facts are brought to his notice which make it evident that a settlement of wages and conditions of employment is desirable or necessary.

Besides being able to open conciliation procedure on his own initiative, the chairman also has the right to refuse his intervention if the dispute is justiciable. This right of refusal lapses, however, if both parties declare before opening negotiations that they are prepared to accept the award of the conciliation board ¹.

¹ The right of the chairman to refuse to open proceedings is not affected by any clause in a collective agreement designating the conciliation board as the competent body to settle by award any disputes arising out of the agreement, since, according to practice, the parties cannot renounce the right to refuse the arbitration award by such an agreement. That is to say, a preliminary undertaking that the award will be accepted can be given only for each particular case and not in general at the conclusion of the collective agreement.

The conciliation board must attempt, in the first place, to bring about an amicable settlement between the parties by means of a compromise. With this object, the chairman of the committee may himself institute conciliation proceedings at once, without summoning the committee, provided that the parties concerned appear before him without a special summons. He may also summon the parties to appear before him by means of an informal invitation. If no settlement is reached before the chairman, or if one or both parties fail to attend, proceedings must be opened before a committee of the conciliation board. The proceedings are held in private. Either party may attend in company with authorised representatives or may, at his own expense, be represented by relations, managers or salaried employees, members of the same trade, or authorised representatives of his trade association ¹.

If the proceedings take place before a committee, the chairman may also request the assistance of any other persons "whose participation is likely to promote agreement" ². If a party, which has in principle recognised the competence of the conciliation board for the settlement of a dispute, fails to attend without valid reason, the proceedings must be carried through in his absence, i.e. the board must give a decision. If both parties fail to appear, the proceedings are suspended.

The conciliation boards may demand the assistance of the Federal administrative authorities and officials and of the communes. They are also empowered to hear witnesses and experts, but may not require anyone to take an oath. If a witness wishes to give evidence on oath or refuses to give evidence, or if any person has to be examined elsewhere than at the seat of the conciliation board, the competent law court may be required to give legal assistance.

The right to raise an objection to the chairman or to one of the members of the conciliation board is governed by the principles laid down in the rules of judicial procedure.

If conciliation, which should in the first place be attempted, fails, or if only one of the parties attends the proceedings, an arbitration award must be issued. The award must be published as soon as possible after the close of the proceedings, and the parties are required to declare within a time limit, which may be extended,

¹ Barristers may also act as representatives of the parties.

² Section 9, subsection (2), of the standing orders mentions as examples of such persons the industrial inspector, the district industrial committee, and representatives or officials of the trade associations of both parties.

up to 14 days whether they accept the award or not. An agreement reached before the chairman or a conciliation committee is judicially enforceable, the same applies to an arbitration award to which the parties have submitted. The conciliation board may decide to publish its award and the statements of the parties. If only one of the parties rejects the award, the dispute must be submitted to the competent law court, provided, of course, that the dispute is justiciable. As the awards issued by the conciliation boards are not binding, no appeal may be made against them to the ordinary courts or to the administrative court.

All documents, supplements, minutes of proceedings, and the correspondence and other official communications of the conciliation boards are free from stamp duty and taxation.

Other Statutory Conciliation and Arbitration Machinery

As already stated in discussing the competence of the conciliation boards, Austrian law, in contrast to German law, deliberately does not draw a sharp distinction between collective and individual disputes, particularly in view of the fact that in certain circumstances decisions given on individual disputes may have great importance as precedents for the future regulation of conditions of employment. This applies, even more than to the conciliation boards, to the other statutory conciliation and arbitration bodies, which are primarily concerned with the settlement of individual disputes, although naturally it is quite possible for these bodies also to deal with collective disputes arising out of conditions of employment, and in most cases the law provides that the workers within their jurisdiction shall be bound by a collective agreement.

(a) *Arbitration committees of industrial guilds.* — The industrial guilds (*Gewerbege nossenschaften*), a form of organisation peculiar to Austrian law, are compulsory associations which stand in historical relation to the mediaeval guilds. Under section 106 and the following sections of the Industrial Code, all persons practising the same or kindred trades independently or as contractors in the same commune or district, together with their journeymen, are bound together in a corporate association, the object of which is to further a corporate spirit, maintain the honour of the trade, and promote the interests of its members. Anyone practising a given trade as a master becomes *ipso facto* a member of the competent guild, while journeymen similarly become associates. Membership is optional for persons practising their trade in a factory.

Section 122 of the Industrial Code provides for the setting up of arbitration committees to settle all disputes arising between members and associates of the guilds out of wage, employment and apprenticeship conditions. These committees are competent if both parties to the dispute accept their jurisdiction in writing or if, after the committee has been convened by one of the parties, the other party appears before it on incitation and accepts its jurisdiction. The political authorities of the State determine the size of the committee, on which masters and journeymen must be equally represented. The members of the committee elect a chairman and deputy chairman from among themselves by a majority vote. The dispute may be settled by an amicable agreement or by an arbitration award. In order to be legally enforceable, a settlement must be concluded before the chairman or his deputy and two members of the committee, one masters' and one journeymen's representative.

In order to issue an arbitration award, for which an absolute majority is necessary, the committee must be composed of four members and the chairman. The agreements and decisions reached by the committee are enforceable by administrative procedure; this is in fact the fundamental difference between these committees and the conciliation boards, which have no power to enforce their decisions. Appeal against the committee's decisions may be lodged within eight days with the competent judicial authority, but without suspensive effect. In practice the part played by the arbitration committees is insignificant. In most cases the parties prefer to lay the dispute before the competent court of law immediately in order to secure a more rapid settlement.

(b) *The Federal Act of 26 September 1923 respecting the contract of employment of salaried employees in agriculture and forestry (Estate Employees Act)*¹ makes provision for arbitration boards for procedure in disputes arising out of conditions of employment, to be set up by Order after hearing the trade associations concerned. So far however no such Order has been issued, and the ordinary courts are therefore competent to deal with disputes arising out of the conditions of employment of these groups of employees. Such disputes cannot be submitted to the conciliation boards since their jurisdiction extends only to conditions of employment in industries subsidiary to agriculture.

(c) All the *Agricultural Labour Codes* provide for the possibility of setting up machinery to deal with disputes arising out of

¹ *Legislative Series*, 1923, Aust, 2.

conditions of employment in agriculture by means of Orders issued by the head of the State. So far such machinery has been set up in three States only. In Carinthia an Order of 3 March 1922 set up joint conciliation boards in all communes for the purpose of facilitating the conclusion [of settlements out of court. They are not, however, empowered to take decisions. The State Government of Lower Austria also set up conciliation boards in all communes by an Order of 18 November 1921. Settlements reached before these boards are legally enforceable. Finally, in Styria, section 23 of the Agricultural Labour Code and the Order of 23 June 1923 provide that disputes arising between agricultural employers and workers shall within thirty days be brought before an arbitration board to be set up in each commune and to consist of two employers and two workers together with a chairman to be chosen by them. If the board is unable to bring about an amicable settlement it must issue an arbitration award by a majority vote. The chairman has only a casting vote. Settlements and awards to which the parties have agreed are legally enforceable. Any party who rejects the award may have recourse to the ordinary court of law.

(d) Under the *Domestic Servants Act*, conciliation boards may be set up in virtue of administrative instructions. As no such instructions have yet been issued, the competent body is the industrial court or, where none exists, the ordinary court of law.

CONCILIATION AND ARBITRATION MACHINERY PROVIDED UNDER COLLECTIVE AGREEMENTS

1. A collective agreement concerning conciliation and arbitration procedure has recently been concluded between the Association of Employers in Insurance Institutions and the Insurance Employees' Union. The Insurance Employees' Union undertakes to appeal to the arbitration committee provided under the collective agreement before resorting to organised militant action. One of the members of this committee is appointed by the employers' association and the other by the employees' union. The chairman is chosen by lot from a panel drawn up by both organisations.

If a dispute arises, the employees' association notifies the employers' association that the arbitration committee has been convened and indicates the member it has chosen. The employers' association must then reply and nominate its own member. The chairman must first attempt to bring about an amicable settlement

between the parties. If conciliation is unsuccessful, the arbitration committee issues a decision, which is, however, like the awards of the public conciliation authorities, binding on neither party. The parties must inform the chairman in writing within eight days whether they accept the award or not. If no intimation is received or if the award is rejected, a further attempt at conciliation must be made by a representative of the Chamber of Commerce and Trade and a representative of the Chamber of Workers and Salaried Employees, both in Vienna.

A certain guarantee for the conclusion of a settlement is afforded by the provision binding the employees' organisation not to resort to organised militant action until five weeks after the date on which the arbitration committee was convened.

2. The collective agreement for the Austrian book-printing trade concluded in 1925, the only collective agreement covering the whole of Austria, unites all the Austrian book-printing presses and their workers in a common alliance (*Tarifgemeinschaft*) with the object of maintaining peace between employers and workers. The organs of this alliance, in addition to the joint employment exchange which is compulsory for both employers and workers, are the arbitration boards and the joint board (*Tarifamt*).

The arbitration boards are competent to decide disputes arising out of conditions of employment regulated by the collective agreement. Disputes of this kind may not be brought before any other court. The boards, which are set up in each of the Federal States, must be composed of from three to five employers and an equal number of workers, together with at least two substitutes for each group. Both members and substitute members are appointed for the duration of the agreement.

Complaints must be submitted to the board within four weeks of the beginning of the dispute and must be handed in to the chairman of the group making the complaint. The proceedings of the board are oral. Unanimous awards are binding on the parties. If no unanimous award can be adopted, the case may be submitted to the joint board. In practice the jurisdiction of the arbitration covers individual as well as collective disputes.

In addition to its function as a judicial body, the arbitration board has to try to promote an amicable settlement in any dispute arising out of the collective agreement. At the request of one of the parties it must issue an award.

The joint board, which has its seat in Vienna, is composed of four employers and four workers, all appointed for the duration

of the agreement. The board appoints an impartial chairman and deputy chairman. If it is unable to agree on the choice of a chairman, the appointment is made by the Federal Ministry of Social Affairs.

In addition to the discussion and fixing of conditions of employment, the functions of the joint board include conciliation between employers and workers in disputes arising out of the agreement in which the arbitration board has been unable to bring about a settlement, particularly if the arbitration board has come to the conclusion that the dispute can be decided only by means of a supplementary interpretation of the agreement. In such cases the arbitration board itself must refer the dispute to the joint board. Appeals against arbitration awards that have not been unanimously adopted are also dealt with by the joint board.

Decisions taken by the arbitration board which are in contradiction with the express provisions of the agreement may be quashed or altered by the joint board or referred back to the arbitration board.

All the decisions of the joint board are final and binding. No appeal against them may be made to the ordinary courts.

§ 3. — Results and Opinions

ACHIEVEMENTS OF THE CONCILIATION BOARDS AND SUGGESTED REFORM OF THE AUSTRIAN CONCILIATION AND ARBITRATION SYSTEM

As already stated, the Austrian conciliation boards have three separate functions: they act as wage boards, judicial authorities in matters arising out of the functions of works councils, and conciliation and arbitration boards. Although they are generally considered to have fulfilled their functions successfully as judicial bodies and in connection with the observance of collective agreements, it is objected against them that they have more or less failed in the sphere of conciliation and arbitration. This is, in the opinion of the interested circles, due to the fact that the custom of appointing a judge as chairman of the board, which qualifies it exceptionally well for its judicial functions, acts, on the other hand, as a handicap so far as conciliation and arbitration procedure is concerned. It is pointed out on both employers' and workers' sides that

the chairman is naturally unfamiliar with economic questions; that though he is competent in the legal sphere, he is unable to appreciate the economic considerations which play the most important part in conciliation and arbitration; and that his professional bias inclines him to set legal considerations in the foreground instead of approaching the case primarily from an economic standpoint. He is not sufficiently in touch with the parties and lacks the specialised trade knowledge and the authority necessary to enable him to work successfully for a settlement between the parties, with the result that the more important wage disputes are very rarely submitted to the conciliation board but rather to the mediation of experts, who enjoy the confidence of both employers and workers. Preference is therefore expressed for the German system, under which the persons appointed as arbitrators are not merely formally acquainted with the question under consideration but possess comprehensive specialised knowledge and can therefore intervene very much more influentially than can a judicial chairman in spite of all his good-will. This criticism of the Austrian conciliation and arbitration system is undoubtedly well-founded, and will have to be taken into account when any reform of the system is attempted.

A further shortcoming of the conciliation boards in their capacity of conciliation bodies is the overlapping of their jurisdiction with that of the industrial courts in respect of the settlement of individual disputes. The Act should limit the jurisdiction of the conciliation boards to collective disputes and reserve the handling of individual disputes to the industrial courts. This would of course depend on the existence of industrial courts throughout the country and not merely in the industrial districts, since so long as individual disputes based on labour law are dealt with by the ordinary courts, as is the case where there is no industrial court—that is, exclusively by legally trained judges without the co-operation of laymen—the parties will still prefer to submit them to the conciliation boards for settlement.

The fact that so little prestige attaches to awards issued by the conciliation boards in collective disputes, which is partly due to the faulty organisation mentioned above, is alleged by the workers' organisations as a pretext for demanding that a reform of the Austrian conciliation and arbitration system on the German model shall also include the introduction of compulsory arbitration, that is, the power to declare binding awards issued by the arbitrator. This proposal is supported mainly by workers of the German

Nationalist groups, who have repeatedly demanded that the Supreme Conciliation Board should be empowered to declare awards binding if expressly requested to do so by one of the parties. A Bill intended to introduce the German system of compulsory arbitration has been submitted to the National Assembly by the pan-German groups, and will no doubt have to be considered by the new Assembly.

The general opinion in Austria, however, is by no means favourable to this proposal. The employers are entirely opposed to it. They point out that the success of the system in Germany has often been very questionable and that it has been instrumental in imposing almost intolerable burdens on industry ; on the other hand, there have also been cases in which arbitration awards declared binding, but imposing too heavy a burden on one or other of the parties, have never been carried out at all, a proceeding which weakens the authority of the State in a most undesirable manner. Above all it is accused of undermining the sense of responsibility of both parties. Moreover, compulsory arbitration is said not to have been as favourable to the workers as many of them maintain, since it can equally well be turned against them. In regard to the attitude of the Austrian workers towards compulsory arbitration, those of the Social Democratic trade unions that do not comprise salaried employees are opposed to its introduction ; they prefer to maintain intact the absolute freedom of decision of the parties in this respect also, and are afraid of the intervention of political considerations in filling the post of arbitrator. Salaried employees have in the main adopted a different standpoint. They are in favour of the fixing of minimum wage rates by the authorities, since experience has shown them that there is little inclination among their employers to conclude collective agreements. During parliamentary debates on the subject the Government has also expressed its opinion, and has made no secret of the fact that in its view there are very serious objections to the introduction of compulsory arbitration in Austria.

§ 4. — Statistics

In the absence of other statistical data relating to the Austrian conciliation boards, the table on page 296 gives some information on the number and results of labour disputes in Austria.

STR. ES AND OK.

	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Total number of labour disputes	420	320	447	325	204	216	266	226	88	68
Strikes	381	268	401	287	186	195	242	202	83	56
Lock-outs	39	52	46	38	18	21	24	24	5	12
Undertakings affected by labour disputes	6,426	2,113	7,559	1,932	737	527	759	599	219	—
Undertakings affected by strikes	5,846	1,793	6,960	1,647	653	440	687	535	169	253
Undertakings affected by lock-outs	580	320	599	285	84	87	72	64	50	—
Total number of workers employed in the undertakings affected by labour disputes	325,524	177,932	316,986	89,551	29,241	44,797	50,150	44,752	11,845	—
Total number of workers affected by labour disputes	228,425	155,068	296,878	66,948	21,943	35,300	38,290	30,446	7,173	10,264
Strikers	211,429	116,669	268,696	46,743	18,624	28,769	32,948	23,799	6,170	8,502
Workers affected by lock-outs	16,996	38,399	28,182	20,205	3,319	6,531	5,342	6,647	1,003	1,762
Total number of working days lost as the result of labour disputes	1,835,086	1,614,156	2,816,109	1,166,217	297,684	686,560	658,024	388,336	49,373	132,757
Working days lost as the result of strikes	1,635,443	1,074,377	2,295,493	666,373	232,944	476,709	562,992	286,505	40,885	100,465
Working days lost as the result of lock-outs	200,643	539,779	520,616	500,444	64,740	209,851	65,032	101,831	8,488	32,292
Completely successful strikes	112	71	82	57	43	51	57	37	18	12
Partly successful strikes	198	152	229	164	98	119	143	110	39	24
Unsuccessful strikes	71	45	90	66	45	25	42	55	26	20

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HUNGARY

§ 1. — Economic Background and Development

Hungary to-day extends over an area of 93,010 square kilometres and has a population of about 8,662,000. In 1910 the State of Hungary had an area of 325,411 square kilometres with a population of about 20,686,000. According to the occupational distribution of its population, Hungary was definitely an agrarian country before the war, 64.5 per cent. of the whole population being employed in agriculture and 23.5 per cent. in industry. Here too the Treaty of Trianon brought about a change. The new Hungary had an agrarian population of only 55.8 per cent. while the proportion of industrial workers rose to 30.1 per cent. Since the war this proportion has shifted still further to the disadvantage of the agricultural population. Whereas in 1920 Hungary had about 220,000 industrial workers, at the beginning of 1931 their number had risen to about 700,000.

The most important industries of the country are concentrated in Budapest, where the organisation of the workers is also most highly developed. In 1928 almost three-quarters (71.5 per cent.) of the members of the "free" (social democratic) trade unions lived in the capital, while only just over one-quarter (28.5 per cent.) came from all the rest of the country. The membership of the free trade unions, whose central organisation is the General Council of the Hungarian Federation of Trade Unions (*Magyarországi Szakszervezeti Tanács*) was 124,378 in 1928, 110,704 in 1929, and 96,000 in 1930.

Next in importance to the free trade unions are the Christian workers' unions. The central organisation is the Federation of Christian Trade Unions (*Kereszténysocialista Országos Szakszervezetek Központja*) and on 1 January 1930 included unions with a total membership of 52,100¹.

¹ For further details cf. *Freedom of Association*, Vol. III, p. 165.

In the year 1848 a movement started among workers in the Budapest book-printing trade, which aimed at obtaining improved conditions of work and in particular the introduction of a ten-hour working day. The Government of the time instructed the authorities to mediate between the representatives of the two parties, and thanks to its intervention peace was restored by the conclusion of a collective agreement corresponding to the workers' demands¹. This procedure was not, however, followed on subsequent occasions, and the strong repression of combination led more and more often to police intervention in the workers' fight for higher wages.

The Industrial Act of 1884 was intended finally to remedy this state of affairs, which had already been slightly improved by the first Hungarian Industrial Code of 1872. Section 163 of this Act provides that if an industrial dispute arises, a conciliation committee is to be set up consisting of six representatives of each of the parties concerned. The committee sits under the chairmanship of the president of the industrial authority of first instance. If the dispute arises in a craft, the members of the committee are chosen from among the members of the industrial corporation's committee. In framing the Act, it was not intended also to empower the committees to take decisions.

The provisions of section 163 of the Industrial Act of 1884 were supplemented in 1893 by an amendment empowering the Minister of Commerce, should the conciliation committee fail to reach an agreement, to instruct the industrial inspector to try to effect a settlement. A statutory basis was thus given to the already long-established practice of calling in the industrial inspector for the settlement of collective labour disputes.

These legislative measures did not, however, produce the desired results. The conciliation committees became important only in minor industries; in large-scale manufacturing industries not a single conciliation committee was set up during the first ten years following the coming into force of the new Act.

The Minister of Commerce therefore decided, after preparations extending over several years, to include a revision of conciliation procedure in a new industrial Act. The parliamentary discussion of the Bill worked out for this purpose was interrupted by the outbreak of the Great War.

¹ IMRE FERENCZI: *Das Koalitionsrecht in Ungarn*, p. 183.

After the war the preliminary legislative work for the development of conciliation and arbitration procedure was again taken up and bore fruit in the Bill introduced in the National Assembly by the Government in the spring of 1923 on the right to work, conciliation and arbitration, and trade associations. Although this Bill did not become law, it nevertheless deserves a place in this study because of its influence on the legislation at present in force.

The Bill divided all the industries of the country into three groups :

- (1) State, municipal and communal undertakings ;
- (2) Railway and shipping undertakings and other undertakings of direct public utility as specified in a list made up and periodically revised by the Ministry of Commerce ;
- (3) All other industrial undertakings.

Under the terms of the Bill, stoppages of work were in principle forbidden in the first two groups, and all disputes were to be settled by the higher authorities concerned. If the authorities failed to bring about an agreement, the Bill provided for an arbitration award, except in disputes in the postal, telegraph or telephone services and public railway services, in which the case was to be finally settled by the decision of the authorities.

In the third group, which includes much more than half the undertakings in the country, conciliation and arbitration procedure was only to be resorted to at the request of both parties. There was no compulsion for either party to have recourse to the machinery for conciliation and arbitration.

This Bill raised violent opposition, due particularly to the sections dealing with trade associations. As, however, owing to the failure of the 1884 Act, the lack of State machinery for conciliation was being increasingly felt, the National Assembly, although it did not pass the Bill, authorised the Government in the same year " in consideration of the abnormal economic conditions and with a view to the peaceful settlement of wage disputes to set up joint conciliation committees ". The Government took advantage of this authorisation to issue the Order of 4 September 1923¹. As this Order lies at the root of the Hungarian legislation at present in force for the settlement of collective labour disputes by State machinery, its provisions will be discussed in detail.

¹ *Legislative Series*, 1923, Hung. 5.

It is worth noting that as a result of the dilatory procedure of the legislative authorities, a vague system of conciliation with no statutory basis has grown up in a number of industries ; other industries, again, have solved the conciliation problem on the model of foreign countries, by way of collective agreements.

§ 2. — The System in Force

CONCILIATION ON THE BASIS OF THE ORDER OF 4 SEPTEMBER 1923

The Order of 4 September 1923 aims, in its own opening words, at regulating conciliation procedure. For this purpose it sets up State machinery in accordance with the following provisions :

The Minister of Commerce nominates for an indefinite period three conciliators for the chief industrial inspector, and also for every industrial inspector with the exception of the Budapest inspector, and publishes a list of the names of the conciliators so appointed. If conciliation proceedings should be required, the conciliator whose name is first on the list invites the parties to attend the proceedings. Employers and workers are then each entitled to send representatives, not exceeding five in number, who together with the conciliator form the conciliation committee for the case, with the conciliator as its chairman. Acceptance of the office of member of the conciliation committee is compulsory.

The disputes for which the conciliation committees have jurisdiction are those "concerning wages between an industrial employer and industrial workers". For conciliation proceedings to be instituted the dispute must be "of so serious a character that the peaceful continuance of work is thereby endangered".

The provisions concerning the territorial jurisdiction of the committees apply only to the conciliator, since the members of the committee are nominated by the parties themselves. The conciliator's jurisdiction covers the district of the industrial inspector for whom he was appointed, except in the case of the conciliators appointed for the chief industrial inspector ; their jurisdiction covers the district of the Budapest inspector, and they may also act when the dispute between employers and workers has arisen in establishments in two or more industrial inspection

districts. The Minister of Commerce may also entrust conciliation proceedings to the Budapest conciliators in the case of a dispute which has arisen outside their district but obviously extends to the whole country.

The first step in the proceedings is the notification of the dispute to the competent industrial inspector who in his turn informs the conciliators. Each party has the right to raise an objection once only to one of the conciliators only. When these preliminaries have been disposed of, the committee is formed in the manner described above, and an early date is fixed for its negotiations to take place. Failure on the part of a member to appear at the negotiations may be punished by a fine.

The chairman opens the proceedings by establishing the facts of the case, and a statement of these facts is recorded in the minutes and forms the basis of the subsequent negotiations, unless the parties at once raise objections to it. There are no further regulations dealing with the hearing of evidence.

The object of conciliation proceedings under the Order of 4 September 1923 is to bring about agreement between the parties. If they are successful, the agreement concluded is binding on the employers of all undertakings affected by it for the period laid down in the agreement. If no definite period is fixed by the agreement, an attempt should be made to fix a time limit for giving notice to terminate it. These provisions do not apply to wage disputes that arise in State, municipal or communal public utility undertakings, or to railway and shipping undertakings intended for purposes of public transport. Here we have an echo of the provisions of the Bill of 1923 (see above, § 1).

CONCILIATION THROUGH INDUSTRIAL INSPECTORS AND MINING AUTHORITIES

Even before the promulgation of the Industrial and Factory Workers' Protection Act of 1893 (see above, § 1), the industrial inspectors had intervened as mediators in collective disputes in cases of emergency. The Act did not regulate this procedure, however, and the settlements brought about by the industrial inspectors are not legally enforceable. The same is true of the informal conciliation procedure of the mining authorities, which has no legal basis. This too is only an emergency measure, intended to fill the gap due to the lack of any State machinery for conciliation applicable to the whole country.

CONCILIATION ON THE BASIS OF WAGE AGREEMENTS

In almost all the industries in which conditions of employment are governed by collective agreements, these agreements also provide machinery for conciliation and arbitration in collective labour disputes. The names given to such institutions are not always the same, but the terms conciliation committee, appeal committee, wage protection committee, and labour regulation committee, are those most usually found.

The structure and working of the unofficial conciliation and arbitration machinery present the following special features.

The conciliation committees provided for by collective agreements may be permanent or temporary. They are permanent, for instance, in the carrying and transport trades, the intaglio printing and Budapest book-printing trades, the book-binding trade, the fur trade, the artificial stone trade, and other industries. An example of a non-permanent conciliation committee, formed only on the outbreak of a dispute, is given by the provisions for conciliation in the collective agreement for inside and outside plasterers. This agreement is also peculiar in that it draws a definite distinction between conciliation and arbitration, and sets up separate machinery for each of these two forms of procedure. Non-permanent conciliation committees are less frequent than permanent ones. In many agreements it is expressly stipulated that the arbitration committees are to be set up for the whole period of validity of the agreement itself. The committees are composed as a rule of an equal number of employers and workers. Under some agreements the employers and workers directly concerned in the dispute are not allowed to belong to the committee. The appointment of the chairman is a question settled in different ways. As a rule, employers and workers take the chair in turn, but a frequently recurring provision lays down that the party who has opposed the proposal under dispute shall appoint the chairman. This ensures that an employer takes the chair when the proceedings have been instituted by the workers, and *vice versa*.

Appeal to the committees in all cases of dispute is compulsory. With the exception already mentioned, no definite distinction is, as a rule, drawn between conciliation and arbitration. Certain agreements allow a refusal to take part in conciliation proceedings on the ground of sabotage. Regulations for further procedure

are for the most part laid down in standing orders drawn up by the committee itself, and sometimes incorporated in the collective agreement.

According to an almost universal practice, a simple majority is enough for the adoption of a decision. Both parties undertake to accept it beforehand, and failure on either side to observe the terms of the settlement may be punished by a fine, the amount of which is usually left to the discretion of the committee.

§ 3. — Results and Opinions

The results achieved by State conciliation have not been remarkable. As official statistics of strikes have been kept only since 1926, information on the number of labour disputes during earlier years has to be taken from the approximate data of the Trade Union Council, which relate only to factories. The figures for 1923 and 1924 are as follows :

Year	Number of strikes	Number of workers affected	Number of workers employed by the undertakings affected at the outbreak
1923	306	153	66,779
1924	187	41	38,458

For later years there are official strike statistics, from which the following figures are taken :

Year	Number of disputes	Number of undertakings affected	Number of workers affected	Number of working days lost
1926 . . .	56	91	9,580	51,965
1927 . . .	84	147	24,803	294,941
1928 . . .	31	77	10,289	131,174
1929 . . .	63	164	15,065	149,204
1930 . . .	35	39	1,250	79,596

In estimating the importance of these results it should be borne in mind that of the conciliators provided for by the 1923 Order only those for the industrial inspectors in Budapest were appointed, and none for the other industrial inspectors.

Hungarian employers have on the whole adopted a hostile

attitude towards the development of the conciliation system. As early as 1917 the annual report of the Hungarian Iron and Engineering Industries noted that in most cases the employers preferred to dispense with the official machinery and to deal directly with the workers. The employers have since consistently maintained this attitude. It was also owing to the opposition of the employers that the 1923 Bill on the right to work, conciliation and arbitration, and trade associations failed to become law.

The workers, on the other hand, complain of the low level of their wages¹ and of the absence of suitable machinery for the establishment of labour demands.

The late Under-Secretary to the Minister of Commerce, Desiderius Pap, a man with a wide knowledge of Hungarian labour conditions, expressed his opinion of the conciliation system in his country as follows: "Machinery for conciliation should be set up in the form of permanent institutions, and wherever possible each separate industry should have its own conciliation committee, consisting of employers and workers in that industry under the chairmanship of a legal and economic expert. These conditions are far from being realised in Hungary. . . . The efficient organisation of the employers leaves them with no interest in the establishment of an effective conciliation system. Such an interest is to be found only on the side of the workers who, however, are still waiting in vain for the official conciliation procedure already sanctioned by law to be applied in fact."

§ 4. — Conclusion

Conciliation and arbitration procedure in Hungary has not kept pace with the development that has taken place in many other countries during the past ten years. The Order of 1923, which was intended to provide uniform conciliation machinery for the whole country, was applied only in the Budapest district. The provinces still lack conciliation machinery capable of functioning on the lines laid down by the Order. The slow development of State conciliation has favoured the growth of a complex unofficial system of conciliation and arbitration, which has established itself in all the more important national industries.

¹ Cf. *Szarkservezeti Értesítő* — *Gewerkschaftsanzeiger*, 1930, No. 2.

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CZECHOSLOVAKIA

§ 1. — Economic Background and Development

The lack of uniformity in the machinery for the settlement of labour disputes in the Czechoslovak Republic can be attributed to historical causes. The Government, faced by the host of administrative problems involved in the consolidation of the newly constituted State which emerged from the political revolution, left the employers and workers considerable freedom to devise their own machinery for conciliation and arbitration.

The obstacles in the way of uniform methods of settlement may be briefly described. These can be traced partly to national and social differences in the composition of the workers' organisations¹ and partly to variations in the economic structure of the different parts of the Republic. Thus the Provinces of the Old Kingdom (Bohemia, Moravia and Silesia) are predominantly or to a large extent industrial, while Slovakia and Sub-Carpathian Russia are almost exclusively agricultural. In 1921 41 per cent. of the population in Bohemia was employed in industry (29.7 per cent. in agriculture), in Moravia 35.8 per cent. (38 per cent. in agriculture), and in Silesia 50.7 per cent. (21.9 per cent. in agriculture), while in Slovakia 60.6 per cent. of the population was employed in agriculture and only 17.7 per cent. in industry. In Sub-Carpathian Russia 67.7 per cent. of the population was dependent on agriculture and 7.7 per cent. on industry.

In some branches of industry machinery for conciliation and arbitration was devised under the supervision of the local autonomous public bodies, with the result that here again there is a lack of territorial and functional uniformity in the organisation of the machinery.

Despite the fact that at one time the territory of the Czechoslovak Republic, with the exception of the little Province of Hultschinen², which is negligible on account of its small area and

¹ Cf. INTERNATIONAL LABOUR OFFICE : *Freedom of Association*, Vol. III, pp. 187 et seq.

² Formerly part of the German Empire, but ceded to Czechoslovakia by the Treaty of Versailles, Article 83.

population (50,000 in an area of 340 square kilometres as against a population of 14,730,000 and an area of 140,400 square kilometres in the Republic), formed part of the old Dual Monarchy of Austria-Hungary, the history of conciliation and arbitration in Czechoslovakia is not exhausted by a reference to the situation in Austria, since the social evolution of the territory that now constitutes the Czechoslovak Republic differs in some respects from that of other parts of the former Dual Monarchy.

It was in Brünn (Brno), Bohemian Leipa (Ceska-Lipa) and Reichenberg (Liberec) that the first serious labour disputes in Central Europe arose, in 1843 and 1844. Although at the time the Government, with the aid of the military, succeeded in quelling the disturbances, which were caused by the introduction of mechanical methods of production, it was compelled to appoint a commission of enquiry into the conditions of work in the industries involved. In view of the state of opinion there could not yet be any question of setting up a joint commission ; some decades had to pass before the principle that the workers and employers should participate in the settlement of collective labour disputes came to be generally accepted.

This principle first found concrete expression in the collective agreement of 1900 in the printing trade. An earlier agreement in that trade (1895) had already provided for the setting up of an arbitration board, but this body was competent to deal only with individual disputes, whereas the 1900 agreement also referred to the settlement of collective disputes. Later agreements further extended the functions of the arbitration board. Agreements concluded in 1905 and 1913 made recourse to arbitration compulsory, but such provisions were still the exception, and in 1914 only one-fifth of the total agreements concluded (18.8 per cent. in 1913) contained clauses on arbitration.

Legislation for the settling of collective labour disputes was passed only in the mining industry. The executive committees of the associations set up in the mining industry by the Act of 14 August 1896 were authorised to act as conciliation boards in the event of labour disputes affecting " all the workers, or large groups of workers, in one or more undertakings belonging to the association ". As these boards did not, however, inspire the workers with confidence, they were still of little importance when the Act was repealed on 25 February 1920.

On the other hand the activities of the industrial inspectorate, instituted in 1883 (Act of 17 June 1883, *Reichsgesetzblatt*, p. 117),

were of the utmost importance for industry generally. Under section 12 of that Act the industrial inspectors were charged with "the equitable settlement" of disputes between employers and workers. Acceptance of the inspectors' proposals for settlement was not made compulsory.

The industrial courts already functioning under the Dual Monarchy dealt only with judicial disputes between individuals, and may therefore be left out of account in a survey of conciliation and arbitration machinery in the Czechoslovak Republic.

The war gave a new impetus to the movement for the peaceful settlement of labour disputes. The military¹ control of undertakings left the workers without defence against contraventions of the provisions of collective agreements by employers. A protest was made by the workers as early as 1914, but without success. In 1915 the Federation of Czechoslovak Trade Unions requested the Government to establish a joint arbitration court for the settlement of labour disputes, and in 1916 it repeated its request. In 1917 the demands of the unions received more attention on account of the news concerning the Russian Revolution. As in other parts of the Dual Monarchy, "committees for the investigation of complaints were appointed to give decisions in regard to requests brought forward by individuals or groups and to take official action". Their decisions were final and enforceable by the public authorities. These bodies were abolished at the end of the war, so that at the beginning of 1919, when a serious dispute arose in the metal industry, no means of peaceful settlement were available. This situation led to the passing of legislation for the setting up of a wages arbitration court for the metal industry (Act of 5 December 1919, No. 655). Although this Act applied only to the dispute in question, section 14 empowered the Minister for Social Welfare to extend its provisions also from time to time to other disputes arising in the metal industry.

This partial solution was not however considered satisfactory. Despite their deficiencies, the wartime committees for the investigation of complaints had led to a widespread demand for a general and uniform solution of the problem. Thus in 1921 the Social Policy Committee of the Chamber of Deputies adopted the following resolution: "The Committee requests the Government to present at the earliest possible moment a Bill for compulsory arbitration between employers and workers in case of a strike or lock-out".

¹ Cf. the monographs on Austria (p. 281) and Hungary (p. 298).

In the same year the provisions of section 12 of the Industrial Inspection Act of 1883 were extended to Slovakia and Sub-Carpathian Russia.

In spite of these preparatory suggestions, the legislation drafted with a view to establishing a general system of compulsory arbitration was not put into force. It should be noted however that in the meantime legislation concerning conciliation and arbitration was passed or existing provisions modified in certain important branches of industry. Thus the incomplete regulations governing home work and mining were replaced by more satisfactory provisions, and in the building industry legislation on the subject was also passed.

The Act of 4 July 1931 concerning labour courts introduced uniform conciliation regulations in all occupations, since the special conciliation laws that have been passed cover only a certain number of occupations. For example, in agriculture and forestry the organisation of conciliation and arbitration machinery has so far been left to the autonomous public bodies.

Collective agreements also paid increased attention to the problem of the settlement of disputes, so that in 1919 39.7 per cent. of the collective agreements in force contained arbitration clauses. As a result of this development there are at present, if the activities of the factory inspectors are excluded, three kinds of bodies for the settlement of labour disputes in Czechoslovakia : (1) conciliation and arbitration boards appointed under the legislation on the subject ; (2) conciliation and arbitration boards set up by autonomous public bodies ; (3) non-Governmental conciliation and arbitration boards, which are usually set up under the terms of collective agreements.

§ 2. — The System in Force

THE SETTLEMENT OF DISPUTES IN VIRTUE OF LEGISLATION

Home Work

The Act of 12 December 1919 respecting the regulation of conditions of work and wages in home work¹ constitutes the first systematic attempt to deal with the problem of conciliation and arbitration in a specific branch of industry. In the event

¹ *Legislative Series*, 1920, Cz. 2.

of disputes concerning conditions of work and wages "between particular groups of workers and employers and between individual employers and their workers", district committees are to prepare the way for a good understanding, or to settle disputes by awards (section 24). Until recently, therefore, the district committees have been competent as regards the settlement of both individual and collective labour disputes, but this competence has now been restricted by the Labour Courts Act of 4 July 1931¹, section 44 of which repeals the Home Work Act so far as concerns jurisdiction in the settlement of disputes between employers and individual workers. These are now subject to the jurisdiction of the labour courts. The district committees remain competent, on the other hand, for the settlement of collective labour disputes.

These committees are public bodies, but special trade boards are sometimes appointed for separate branches of home industry. The committees consist of nine members, designated by the political authority of second instance for a period of four years. A third of the members are appointed from representatives of the employers, a third from representatives of the workers, and a third consists of persons acquainted with the problems of the industry but not belonging to either the employers' or the worker's groups.

If either of the parties concerned refers a dispute of the kind mentioned above to the district committee, the chairman, who is designated by the political authority of second instance from among the neutral members, first endeavours personally to bring about a settlement of the dispute. If he fails to settle the difference he must call a private meeting of the committee to discuss the matter. The standing orders of the committee are governed by the provisions of the Code of Civil Procedure (section 5 of the Administrative Order). According to these provisions the members of the committee, in issuing their decision, are not bound by previous instructions, so that to some extent they exercise judicial functions. The taking of evidence is also regulated by the Code of Civil Procedure; witnesses may be called and examined upon oath. When the proceedings are concluded the committee issues an award.

As the proceedings of these committees are to some extent in the nature of judicial action, provision is made for appeal. Within a period of fourteen days from the issue of the award

¹ *Ibid.*, 1931, Cz. 3.

of the district committee an objection thereto may be lodged with the competent central committee for the trade concerned (section 28).

Central committees are appointed in the same manner as district committees, with this difference that their members are not nominated by the political authority of second instance (i.e. the intermediate authority) but by the Minister for Social Welfare (i.e. the central authority) (sections 9-13). In the investigation of complaints no evidence is heard, the decisions of the central committee being based largely on documentary evidence (section 14). Their enforcement is subject to the approval of the Ministry of Social Welfare. The Ministry in withholding or granting its approval must base itself exclusively on the provisions of the law (section 17).

The arbitration awards of a district committee have the force of law. If their provisions are infringed the injured party is entitled to damages (section 33). Although contraventions of the provisions of collective agreements between the parties are punished by fines or imprisonment, no penalties are imposed for contraventions of the awards of a district or central committee (section 34 (2)).

Mining Arbitration Courts

The Act of 14 August 1896 already mentioned contains provisions for the settlement of collective labour disputes in the mining industry ; the results achieved under these clauses have however been of slight importance. A change in this respect was brought about by the Act of 3 July 1924¹, which replaced the Mining Arbitration Courts Act of 25 February 1920². The competence of the mining arbitration courts is still strictly limited by the new Act ; for example, the Act does not empower them to settle disputes between the parties to a collective agreement with regard to the future collective regulation of conditions of employment. But the courts have considerable influence in preventing collective labour disputes, since under section 2 (a) of the Act of 3 July 1924³ they are competent to hear appeals against the decisions of district councils under section 19 (4) of the Act respecting works and district councils in the mining industry of 25 February 1920⁴. Such decisions may concern the part played by the district

¹ *Legislative Series*, 1924, Cz. 2.

² *Ibid.*, 1920, Cz. 2.

³ *Ibid.*, 1924, Cz. 2.

⁴ *Ibid.*, 1920, Cz. 3.

councils in concluding collective agreements respecting wages and working conditions and in securing the observance of such agreements.

The mining arbitration courts are official bodies. They consist of five members; two representatives of the employers, two workers' representatives and a chairman, who is a professional judge. A representative of the district mining authority acts as technical adviser. An appeal from the decision of the mining arbitration court lies with the Superior Mining Arbitration Court, whose members, in addition to the representatives of the parties to the dispute, include three professional judges. As these courts are only indirectly concerned with the settlement of collective labour disputes, it is not necessary to enter into the question of the procedure adopted.

On the other hand the wages committees set up under section 2 of the Administrative Order under the Act respecting works and district councils¹ are of direct importance for the settlement of collective labour disputes. The function of these committees is to mediate in disputes concerning job and day rates of wages that affect "individual workers or groups of workers" and, if necessary, to issue a decision. They consist of four members, two of whom are members of the works council and two delegates of the management. An appeal from the decision of the wages committee may be made to the Mining Arbitration Board.

Act for the Encouragement of Building

The efforts made to relieve the housing shortage in Czechoslovakia after the war led to the passing of an Act for the encouragement of building. For the success of this Act it was essential that building operations should proceed without interruption. For this purpose machinery for the settlement of disputes had to be established, which to-day takes the form of wages arbitration courts, governed by the Act of 10 April 1930 (sections 12 et seq.).

These wages arbitration courts are official bodies, and are entitled to the support of the public authorities and courts in carrying out their decisions. The chairman of the court is a professional judge nominated by the Ministry of Social Welfare, in agreement with the Ministry of Justice. The assessors are nominated by the organisations of the employers and workers concerned (section 14). The court may be convened by the Ministry

¹ *Ibid.*, 1920, Cz. 4.

of Social Welfare as often as it may consider necessary, or by the chairman of the court on the application of the organisations of employers and workers (section 16).

The wages arbitration court is competent, in any undertaking in the building industry :

- (1) to prescribe conditions of employment and wages in so far as a collective agreement fails to provide for the same ;
- (2) to decide in collective disputes arising out of collective agreements ;
- (3) to interpret collective agreements (section 12 (1)).

The parties are bound to refer collective disputes to the wages arbitration courts if they have exhausted all the means provided by the collective agreement for the settlement of disputes ; in other words, disputes must be referred to non-governmental conciliation and arbitration boards before they are brought before the official wages arbitration court (section 13 (2)).

It is not compulsory for the parties to refer a collective dispute to the arbitration court if one of them is engaged in a strike or lock-out. In this case the court may not decide the dispute unless both parties agree in writing to submit to its jurisdiction (section 13 (3)).

As regards the procedure of the wages arbitration court, the following facts may be noted. The proceedings are conducted by a court of five, consisting of a chairman and two assessors each from the employers' and workers' groups (section 17). The parties may be represented by authorised agents, who may not, however, be barristers (section 21).

For the whole of the Czechoslovak Republic, four wages arbitration courts have been set up ; one in Prague for Bohemia, one in Brünn (Brno) for Moravia and Silesia, one in Pressburg (Bratislava) for Slovakia and one in Užhorod for Sub-Carpathian Russia.

(4) Among the bodies for the settlement of collective labour disputes established under existing legislation mention should be made of the General Joint Committee for Wages Disputes and Complaints in Slovakia at Pressburg (Bratislava). As this body exercises functions that in other parts of the Republic belong to bodies set up not by legislation, but by agreement between the employers' and workers' organisations concerned, reference will be made to it elsewhere.

THE LABOUR COURT AS CONCILIATION AUTHORITY

On 5 December 1930 the Government decided to submit to the Senate a Bill concerning labour courts. The Bill as originally drafted provided for compulsory arbitration in collective disputes by the labour courts, but during the discussion in the Cabinet this provision was dropped, owing to the opposition of employers. On the other hand, a provision empowering the labour courts to institute conciliation proceedings by agreement between the parties was retained.

According to section 39 of the Labour Courts Act of 4 July 1931¹, collective labour disputes between one or more employers or one or more of their trade associations and one or more trade associations of workers can at the request of either party be submitted to the labour court in whose district the dispute arose for the purpose of settlement by agreement. An agreement concluded before the labour court in such disputes is binding on both parties for a period of six months, unless the agreement itself fixes some other period. During this period the conditions of employment of the members of the association concluding the agreement are governed by its provisions.

This provision is the first step towards uniform legislative regulation of conciliation in Czechoslovakia on the basis of the voluntary collaboration of the parties concerned. It contains moreover, the first germ of the legal recognition of collective agreements, since it makes an agreement concluded before the labour court legally binding for the period fixed therein and a standard for the conditions of employment of the members of the associations concluding the agreement.

The composition of the labour court for conciliation in collective disputes is the same as for individual and justiciable disputes. The court is composed of a chairman chosen by the Minister of Justice among the professional judges in the place where the labour court is situated — with due reference to their knowledge of labour law and of social conditions — and of one assessor each for employers and workers, both of whom are also appointed by the Minister of Justice on the recommendation of the central associations (sections 5, 6 and 16 of the Act).

¹ *Legislative Series*, 1931, Cz. 3.

CONCILIATION AND ARBITRATION MACHINERY ESTABLISHED BY
AUTONOMOUS OFFICIAL BODIES

The arbitration courts considered so far were official bodies set up by legislation. An account will now be given of the bodies for conciliation and arbitration in industrial disputes established by autonomous official bodies. In this connection it should be noted that the Government has done much to consolidate the machinery in question, which functions in agriculture and the sugar industry.

Agriculture

In agreement with the Bohemian Provincial Advisory Council for Agriculture, the Bohemian Administrative Committee on 20 March 1919 set up a Joint Arbitration Committee for the settlement of collective labour disputes. Similar machinery was established in the other Provinces of the Old Kingdom.

The functions of these bodies were confined to assisting in the drafting of general agreements, the determination of conditions of employment in particular undertakings being left to the local organisations. If disputes arose in this connection, the Central Government appointed joint district committees to work under the administrative authorities of the district. Further, special joint district committees were set up for agricultural salaried employees.

The duty of these committees is to intervene in collective wage disputes when the district authorities consider such action necessary. The committees must first endeavour to bring about a friendly settlement ; if they fail they must issue an arbitration award. The procedure is governed by the provisions concerning arbitration of the Code of Civil Procedure and the decisions issued have the same legal effects as an arbitration award under that Code. When the decisions of the district committees affect the provisions of a general agreement for the whole Province, an appeal may be made to the Provincial Joint Committee. The above applies to Bohemia. As was explained elsewhere, similar machinery exists in Moravia and Silesia, but in these Provinces the Provincial Advisory Council intervenes directly in collective labour disputes, whereas in Bohemia it delegates this function to the Provincial Joint Committee, set up for the special purpose of considering and deciding disputes. In Slovakia and Sub-Carpathian Russia

similar machinery has been established by the Central Government direct.

Forestry

With regard to forestry, the Ministry of Social Welfare, under the Order of 6 April 1922, established machinery modelled on the agricultural conciliation and arbitration committees. Disputes are settled in the first instance by district committees, from whose decisions an appeal may be made to a Joint Committee of the Ministry of Agriculture. A special feature of the last-mentioned Committee is that the Land Office (i.e., the authority in charge of agrarian reform) may send a representative to the meetings of the Committee to act in an advisory capacity.

Sugar Industry

The machinery established in the sugar industry closely resembles that operating in agriculture. Here again arbitration committees have been attached to the Provincial Corporations (autonomous official bodies), but these differ from those in agriculture in that they were not set up by the Government.

NON-GOVERNMENTAL CONCILIATION AND ARBITRATION MACHINERY

Settlement of Disputes by Means of Collective Agreement

In the section dealing with the history of conciliation and arbitration it was observed that until recent years comparatively few collective agreements in the Czechoslovak Republic contained clauses relating to the settlement of collective disputes. It should be noted, however, that the agreements which did possess such clauses invariably operated over a wide area.

The following broad classes of agreement may be distinguished :

- (a) Collective agreements providing for the settlement of disputes by *ad hoc* arbitration committees.

The most important of these is the agreement in the porcelain industry, which has some interesting features. Before the proceedings are opened, the executive of the arbitration committee (a permanent body) must enquire whether the committee has already been called upon to decide a similar difference. Should this be the case, the executive must forward the previous award to the parties concerned and request them to state whether they desire a fresh decision. If the answer is in the affirmative, an arbitration committee is appointed to conduct the negotiations.

- (b) Collective agreements providing for the appointment of a permanent arbitration board.

To this class belongs the agreement in the chemical industry which provides for the establishment of district conciliation boards and a central conciliation board. Only the central board is competent to issue a decision.

The very elaborate agreements concluded in the printing industry also provide for the setting up of permanent bodies. Disputes are decided by arbitration committees, subject to a right of appeal to a joint industrial board, which supervises the observance of collective agreements.

In the metal industry also a permanent arbitration board has been set up by collective agreement.

No general rules can be laid down with regard to the legal effects of decisions issued by boards set up under collective agreements as mentioned in (a) and (b) above. Some agreements refer to the provisions of the Civil Procedure Code in order to secure observance of the decisions arrived at.

- (c) Collective agreements that leave the parties free to refer disputes to an outside body for conciliation or arbitration.

In this category should be mentioned the collective agreements in the textile, hollow-glass and spirit industries. The bodies to which disputes are referred under these agreements are the industrial inspectorate, the ordinary courts or the Joint Central Committee for all industries in Prague. This Committee is a central body for the whole of industry, set up by the employers' and workers' organisations without any assistance from the State, and its activities must therefore be described in this section.

General Machinery for the Whole of Industry

The Joint Central Committee in Prague

In the spring of 1919 representatives of the Czechoslovak Manufacturers' Association and the two most important Czechoslovak federations of trade unions (the *Odborevé Sdružení Československé* and the *Československá obec dělnická*) met to devise suitable machinery for the peaceful settlement of labour disputes.

The outcome of this conference was the setting up of a Joint Central Committee for all industries in the Provinces of the Old Kingdom. A factory inspector was appointed as chairman, acting not in his capacity as a civil servant, but merely as an expert appointed by the two parties. Disputes are referred to the Central

Committee under the provisions of collective agreements or if the two parties agree to bring a particular difference before it.

As the activities of the Central Committee are held to be arbitration proceedings under the Code of Civil Procedure, the parties must agree in writing to abide by the decision of the arbitration court (section 577 of the Code). For some industries (e.g. the spirit industry) in which the competence of the Central Committee to settle disputes is recognised by collective agreement, permanent assessors from the industry concerned are added to the Committee. The chairman conducts the proceedings. The competence of the members is confined to the investigation of facts and to discussion and voting. Decisions are taken by a majority of votes ; in default of a majority the chairman has a casting vote.

During the first few years of its existence the Central Committee aroused widespread interest. Disputes were referred to it most frequently by the trade associations in the textile industry. Next in order of frequency came disputes in the food and drink industry, the wood industry and the cement, metal, chemical and paper industries. In recent years, however, the number of differences submitted to the Central Committee has declined.

The General Joint Committee in Pressburg (Bratislava)

The jurisdiction of the Central Committee in Prague extends only to the Provinces of the Old Kingdom. As the need for a conciliation and arbitration board for the whole of industry was also felt in Slovakia and the parties concerned did not, as in Bohemia, themselves provide machinery for the voluntary settlement of disputes, the Government appointed a General Joint Committee in Pressburg (Bratislava) to investigate wage disputes and complaints. The functions of this Committee are similar to those of the Prague Central Committee. The Ministry of Social Welfare and the Ministry of Commerce and Industry each send a representative to the committee and designate one of these as chairman. The rules governing voting are peculiar. Decisions are taken by a majority of votes, but the chairman takes no part in the voting, even when both sides cast an equal number of votes. In this case the second Government representative present has a casting vote.

The Committee itself decides whether an appeal may be allowed against its award. If it decides in favour of an appeal, it is made to the Joint Central Committee in Prague (see above).

The Joint Committee in Užhorod

This Committee is competent to take measures for the amicable settlement of all collective differences arising between groups of employers and workers in factory undertakings in Sub-Carpathian Russia. The employers appoint two-thirds of the members and cover two-thirds of the expenses of the Committee and the workers one-third. The Committee is mentioned here because its jurisdiction extends to matters that in other parts of the Czechoslovak Republic are normally dealt with by bodies appointed by agreement between employers and workers, instead of by the Government.

§ 3. — Results and Opinions

Owing to the variety in form of the existing machinery for conciliation and arbitration in Czechoslovakia, it is difficult to give statistical data concerning the results achieved. Up to the present, moreover (the end of 1930), no statistical returns of the activity of the conciliation and arbitration boards have been published, but the reports of the factory inspectors contain some data relating to their activities in the sphere of conciliation and arbitration, from which the following table has been compiled :

	1924	1925	1926	1927	1928	1929
Total number of industrial disputes	652	573	415	447	535	365
Including :						
Strikes	294	236	—	170	225	157
Lock-outs	18	16	—	22	16	7
Number of disputes not involving an interruption of work	340	321	—	255	294	201
Number of disputes referred to the factory inspectors	310	275	227	213	216	154
Number of these disputes accompanied by strikes	185	120	90	93	121	83
Number of disputes settled by the factory inspectors	185	120	—	93	121	—

It will be noted that the efforts of the factory inspectors were mainly directed towards the prevention of open strife. A considerable number of disputes were however referred for settlement to other governmental or non-governmental conciliation and arbitration boards.

From the following figures referring to the activities of the central and district committees for home work in 1924, it is clear that the official conciliation and arbitration boards met with initial difficulties, which were only gradually overcome.

	District committees				Central committees	
	Number of committees that took action	Number of committees that remained inactive	Number of amicable settlements reached	Number of decisions issued	Number of disputes	Wage agreements concluded
Textile manufacture . .	4	4	4	4	—	—
Clothing trades	3	5	2	2	—	1
Glass industry	4	1	1	3	—	1
Manufacture of mother-of-pearl goods.	—	—	—	—	—	—
Boot and shoe industry . .	4	4	4	—	1	—

The small number of decisions issued is particularly striking; in practice these committees mainly exercised mediative functions. In the case of the Joint Central Committee in Prague, on the contrary, the number of decisions issued in collective disputes was 13 in 1920, 55 in 1921 (including 4 appeals against decisions of the General Joint Committee in Pressburg (Bratislava)) and 29 in 1924. For later years no figures are available, since the task of compiling conciliation and arbitration statistics, which has figured on the programme of the Czechoslovakian Government Statistics Office for some years, has not yet been begun.

There is a considerable difference of opinion in interested quarters with regard to the influence exercised by the central bodies for conciliation and arbitration set up by the Government. Employers and workers have differed even with regard to the wartime committees for the investigation of complaints, to which reference was made in the introduction. In 1921 the *Průmyslový věstník* (Industrial Gazette), the organ of the Czechoslovakian manufacturers, welcomed the abolition of these committees, which in its opinion had been so unsatisfactory that "no Government desirous of promoting economic progress would dare to reintroduce them" (Vol. VIII, Prague 1921, p. 148).

On the other hand the *Odborové sdružení československé*, the organ of the Czechoslovak Trade Unions, stated that "although the work of the committees has not always been satisfactory, they

have nevertheless succeeded in preventing a great deal of high-handed action " (Vol. XXV, 1921, p. 115).

Notwithstanding the unfavourable comment mentioned above on the committees for the investigation of complaints, the governmental machinery for the settlement of disputes subsequently established in the building industry appears to have functioned to the satisfaction of both sides. The report of the factory inspectors for 1923 (p. 181) sums up the situation as follows : " Although at first the workers did not regard the wages arbitration courts with any great favour . . . they nevertheless frequently availed themselves of their services. The employers on their part, although demanding, whenever occasion offered and especially when asked for their opinions by the Chambers of Commerce and Industry, that the wages arbitration courts should not be renewed, nevertheless came to them with their grievances as soon as the courts were re-established. As, with few exceptions, the decisions issued have been faithfully observed by both sides, it may be considered that the value of these bodies has been proved in practice. "

While the employers have occasionally raised objections to governmental machinery for conciliation and arbitration, no such complaints have been voiced with regard to the boards set up by the autonomous public bodies. In a report issued in 1921 the Czechoslovak Manufacturers' Association admits that " in the sugar industry during the whole of the period since the new State came into being there have been neither strikes nor wage disputes threatening to interfere with production ". It should be noted that in the sugar industry, as in agriculture, the conciliation and arbitration boards of the autonomous public authorities have taken over the duties performed in other industries by governmental bodies.

Among non-governmental bodies for the settlement of disputes the activities of the Prague Central Committee were particularly fruitful during the first few years of its existence. The report of the factory inspectors for 1925 stated the importance of that body was growing every year. The number of collective agreements stipulating that disputes were to be referred for final settlement to the Central Committee was on the increase.

According to the same report " the parties sent representatives to the meetings of the Committee who were fully acquainted both with the technical and with the administrative aspects of the dispute ". The report concludes as follows : " Particularly

striking were the knowledge of the law shown by the workers' representatives and the broad views taken of the questions at issue. Thus the Committee, after years of laborious effort, is at at length developing into what it should be : a tribunal that settles differences by agreement wherever possible and whose procedure is more elastic than the rules laid down by legislation or collective agreement."

In recent years the number of disputes dealt with by the Central Committee has declined.

§ 4. — Summary

The situation with regard to conciliation and arbitration in the Czechoslovak Republic may be summed up as follows :

Conciliation and arbitration are recognised in all Czechoslovak industries as normal methods of promoting the settlement of collective disputes. No uniform machinery for the conciliation and arbitration of disputes has been established. Where the State has not set up official boards or courts the parties concerned have themselves taken steps to establish the necessary machinery, or have set up boards in agreement with the autonomous public authorities.

In principle no distinction is drawn between conciliation and arbitration, but settlement by means of an award is invariably preceded by an attempt to arrive at an amicable agreement. The varying forms of the existing machinery are adapted to the needs of the separate industries and to varying local conditions. In the highly industrialised Provinces of the Old Kingdom the autonomous public authorities are granted considerable freedom of action. In Slovakia and Sub-Carpathian Russia the State takes a predominant part in the settlement of disputes. The Bills for the establishment of uniform conciliation and arbitration machinery drafted after the war were never laid before Parliament.

The Labour Courts Act of 4 July 1931 contains a provision under which the parties may by mutual agreement refer collective labour disputes to the labour courts for conciliation. This provision contains the germ of a uniform legislative regulation of conciliation on the basis of the voluntary collaboration of the parties.

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POLAND

§ 1. — Economic Background and Development

Poland, as reconstituted by the Peace Treaties, has an area of 388,390 square kilometres. This area comprises former Russian Poland (Congress Poland), Galicia, Upper Silesia, former Prussian Poland and part of the Vilna area. On 1 January 1928 the country had a population of 30,213,000.

Although Poland is essentially an agricultural country, it nevertheless has eight very large industrial centres. The principal industries are the mining industry (especially coal-mining) and the textile industry, while the chemical factories, the metal industry and the refineries rank next in importance. The total number of workers may be estimated at about three and a half million. Of these one and a half million are agricultural workers, one million are industrial workers, 400,000 State officials and employees in the independent public services, and 250,000 professional workers.

Under the three systems of government to which the present Poland was subject before the war, employers' associations were able to develop their activity without any particular restrictions. At the present time, most of the associations formed by employers in the different industries of the country are affiliated to central organisations, of which the most important is the Central Union of Polish Industries, Mines, Commerce and Finance (*Centralny Związek Polskiego Przemysłu, Górnictwa, Handlu i Finansów*) formed in 1920, which, in its turn, is affiliated to the International Organisation of Industrial Employers.

The local organisations of artisans are grouped in a Central Society of Artisans in the Polish State (*Centralne Towarzystwo Rzemieślnicze w Państwie Polskiem*).

The Chambers of Industry and Commerce, the Chambers of Agriculture and the Chambers of Artisans, created under the Orders of the President of the Republic issued in 1927 and 1928, have made considerable progress in the country generally.

Finally, agricultural employers' associations have joined to

form several powerful central organisations such as the Union of Polish Agricultural Organisations (*Związek Polskich Organizacji Rolniczych*), the Central Agricultural Society (*Centralne Towarzystwo Rolnioze*), and the Controlling Council of Landed Proprietors' Organisations (*Rada Naczelna Organizacji Ziemianskich*). For the purpose of concluding collective agricultural agreements, landed proprietors are as a rule represented by their district organisations.

The development of the trade union movement before the war was hampered by rigid restrictions, particularly in the territories under Russian domination. After the reconstitution of Poland the movement made considerable progress. The unions are grouped in three large national organisations, according to their political opinions.

(a) The Federation of Trade Unions of Poland (*Związek Stowarzyszeń Zawodowych w Polsce*), represents the Socialist point of view. It is affiliated to the International Federation of Trade Unions of Berlin. A certain number of Communist workers, however, belong to the Federation, and the workers who support the Jewish Socialist Party "Bund" are now also affiliated to it. In 1928 26 central trade unions with a total membership of 237,197 were affiliated to the Federation.

(b) The Federation of Polish Trade Unions (*Zjednoczenie Zawodowe Polskie*) was also formed to protect the interests and improve the conditions of the proletariat, but, in addition, it has a pronounced Nationalist outlook. In 1928 it comprised 8 unions with 125,897 members.

(c) The Federation of Christian Trade Unions of Poland (*Chrześcijańskie Zjednoczenie Zawodowe w Rzeczypospolitej Polskiej*) and the five central organisations connected with it form part of the International Christian Socialist Movement. In 1928 their total membership was 59,778 and the number of affiliated trade unions 42.

(d) The Central Federation of Workers' Trade Associations (former revolutionary section) (*Centralne Zrzeszenie Klasowych Znaków Zawodowych d. frakcja rewolucyjna*) has 40,000 members.

(e) The General Federation of Labour (*Generalna Federacja Pracy*) is a body with a membership of 20,000, to which trade unions approving the principle of collaboration belong.

(f) The Confederation of Economic Associations (*Konfederacja Związków Gospodarczych*) has 20,000 members.

Besides these organisations there are several other less important central trade union associations¹.

To understand the present legislation on labour disputes it is necessary to go back to the three systems of government in force in the various territories that now constitute the Republic² until Poland regained its independence. In Russian Poland, as in the rest of Russia, it was impossible to develop conciliation and arbitration machinery. Up to 1905 there was no freedom of association for trade purposes, or indeed for any purpose, and under the Penal Code of 1903 persons who combined for the purpose of strikes or incited others to combine were liable to imprisonment.

The territories under Austria and Germany, on the other hand, enjoyed a more liberal rule, and even before the war lawfully constituted bodies for conciliation and arbitration were to be found there. In the part of Poland under the German Empire, the Revolutionary Order of 23 December 1918 respecting collective agreements, workers' associations and the settlement of collective disputes was put into force.

As a result of these different systems of government, the laws of the new Polish Republic suffered at first from a lack of unity and even at the present time methods of conciliation and arbitration have not yet been co-ordinated in all respects.

However this may be, the right of assembly and association was recognised from the outset by the Polish Constitution of 17 March 1921. A Legislative Decree concerning associations was issued as early as 3 January 1919, but like the Legislative Decree of 8 February 1919 establishing freedom of association for trade purposes, it applied only to former Russian Poland. The last-mentioned Decree was extended in 1923 to former Austrian Poland.

The present legislation on the subject of conciliation and arbitration in collective labour disputes has reference only to agriculture. The provisions in question are contained in the Act of 1 August 1919, amended by the Act of 11 March 1921³ and supplemented by that of 18 July 1924⁴ (cf. following section).

These same provisions were reproduced by the Act of 23 January 1920, amended on 16 May 1922, which applied them to the settlement of disputes between house owners and caretakers.

A general measure dealing with arbitration and conciliation,

¹ Cf. INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Vol. III, pp. 209 et seq.

² Cf. the studies on Germany, Austria and the U.S.S.R.

³ *Legislative Series*, 1921, Pol. 2.

⁴ *Ibid.*, 1924, Pol. 4.

applying to all labour disputes, has been under consideration for some years. A Bill on this subject was even submitted to the Constituent Assembly of 1919 ; it proposed to establish a system of conciliation and to make arbitration compulsory in cases where conciliation failed, but was not adopted.

Since then, more recent proposals have been considered by the Council for the Protection of Workers (*Rada Ochrony Pracy*), especially after 1928. The latest of these (1929) would cover all labour disputes, except in agriculture, as well as collective disputes between employers and apprentices. According to this scheme, disputes are to be brought before "special" and "district" conciliation and arbitration boards. In each case the Minister of Labour will appoint the members of the board and determine its competence. There will also be a Central Conciliation and Arbitration Board, with headquarters at Warsaw and jurisdiction over the whole of the Republic. Its duty is to supervise the general observance of the Act and to hear any appeals against the arbitration awards. Its chairman and vice-chairman will be appointed by the President of the Republic.

Each board is to be composed of a chairman and one or two vice-chairmen, a number of assessors selected among employers and an equal number selected among workers. Each board will also have a secretariat staff of officials.

The parties may either appear in person before the boards or send accredited representatives, invested with full powers.

The conciliation proceedings will be initiated either at the request of the parties to the dispute, or, in the cases specified by the Act, by the chairman of the board. If an agreement is reached, it will have the force of a collective agreement between the parties. In this case a report will be drawn up and signed by the chairman.

Recourse to arbitration will be had, on the one hand, if no agreement is reached by conciliation (at the request of one of the parties or of the chairman of the board) or directly, whenever the parties so decide, or the collective agreement contains a provision to this effect. Before delivering an arbitration award the board will have to consider the circumstances of the dispute and will be empowered for this purpose to call witnesses and experts and even to request for official information and examine books and documents. The board must moreover hear the parties to a dispute.

The award will be delivered by a majority vote. An appeal will lie with the Central Board against unjust or illegal awards, in accordance with the procedure to be established by the Act.

Finally, if the dispute endangers important public interests, it may, if no agreement is reached by the ordinary procedure, be dealt with by special arbitration procedure. For this purpose an *Extraordinary Arbitration Board* is to be established, composed of a member appointed by the Minister of Justice, a member appointed by the Minister within whose competence the case in question lies, and assessors representing the employers and workers.

The whole of the legal proceedings are to be free of cost, the expenses being borne by the State Treasury.

§ 2. — The System in Force

GENERAL SYSTEM

As has been mentioned above, there is no general system of legislation instituting conciliation and arbitration in collective labour disputes, except in the territory formerly under Prussian rule, in which the German laws ¹ are still in force. In practice however, the amicable settlement of these disputes is secured by the labour inspectors ; indeed, the Order of the President of the Republic of 3 January 1919 and the Order of 14 July 1927² concerning labour inspection instruct the inspectors " to endeavour, in agreement with the parties concerned, to prevent and settle labour disputes ". Apparently this method is regarded with some favour by the parties concerned and disputes are frequently referred to the inspectors. In any case, conciliation constitutes an important part of the inspectors' duties. If their efforts at conciliation fail, the Minister of Labour intervenes to secure the amicable settlement of the dispute.

SPECIAL LEGISLATION (AGRICULTURE)

The Acts of 1 August 1919 and 11 March 1921 (new text of 12 October 1931 ³) deal with collective disputes between employers and workers *in agriculture*. In 1921 these provisions were also

¹ In particular, the Order of the Council of the People's Commissaries of 23 December 1918, concerning collective agreements, workers' associations and the settlement of collective disputes. (Cf. the chapter on Germany.) *Bulletin of the International Labour Office*, 1918, Vol. XIII, p. 10.

² *Legislative Series*, 1927, Pol. 8.

³ *Ibid.*, 1931, Pol. 4.

put into force in the divisions of Poland formerly under Russian and Austrian rule.

The Act of 18 July 1924¹, which also refers to agricultural disputes, introduces a system of special arbitration boards covering the whole of the Republic, except the province of Silesia.

All the boards established under the above Acts are *ad hoc* committees set up for each dispute.

CONCILIATION

The Amending Act of 1921 to the Act of 1919 (new text of 12 October 1931) introduces a twofold system of conciliation. Side by side with the direct mediation of the labour inspectors it institutes conciliation boards.

The labour inspector in his capacity as direct conciliator intervenes either on his own initiative or at the request of one of the parties. He invites the parties to appear before him in person or by representatives and endeavours to bring about a mutual understanding or the conclusion of an agreement. For the purpose of determining conditions of work or wages for the whole of a district, the parties are deemed to be represented by their trade associations.

Recourse is had to the second method of conciliation if the parties so decide in the course of the proceedings before the inspector. A conciliation board is then set up and it is at this point that the representation of the parties by their respective organisations becomes important. It is the duty of the trade associations of the two parties to appoint the representatives who are to serve on the conciliation board. The Act strictly regulates the procedure governing the appointment and eligibility of representatives ; persons who refuse to take part in the elections are liable to a fine. If one of the parties does not belong to a trade association or the organisation concerned refuses to send representatives to the conciliation board, the party in question elects his own representatives, provided that the number of persons concerned in the dispute exceeds ten.

The labour inspector is chairman of the conciliation board *ex officio*. The decisions taken are embodied in a report which must be signed by all the members of the board. The agreement reached is binding for a period not exceeding one year.

¹ *Legislative Series*, 1924, Pol. 4.

ARBITRATION

The Act of 1919-1921 (new text of 12 October 1931) also establishes arbitration boards, composed of from three to five representatives for each party and a chairman elected by the parties, or if the parties fail to agree upon his choice, designated by the Minister of Labour. The members of the board are chosen by the parties' respective trade associations, or by the representatives elected in each commune by employers and workers. Persons who, without sufficient reason, refuse to carry out their duties or to take part in the elections, are liable to a fine.

The labour inspector does not convene the arbitration board unless the two parties affirm their willingness to accept its award. The board settles disputes referred to it at the request of one of the parties, as well as disputes in regard to which no agreement has been reached by conciliation. Moreover, at the request of either party, but not necessarily with the consent of the other party, the labour inspector refers to the arbitration board any disputes that have arisen in respect of failure to observe an agreement previously concluded, or to carry out an arbitration award previously delivered. Failure of either party to appear, without sufficient cause, does not entail the suspension of the proceedings.

A number of detailed provisions lay down the procedure of the arbitration board. The board is not competent to adopt resolutions unless the chairman and at least three representatives of each party are present. The same number of representatives must be present on each side. Awards and resolutions are adopted by majority vote, and are recorded in writing and signed by the members of the Board, together with the minutes. The parties are entitled to demand copies. The proceedings are free of charge.

The awards are enforceable and their provisions binding for a period not exceeding one year. An award that regulates wages and conditions of employment for the whole of a district is enforceable throughout that district and forms the basis for the conclusion of individual contracts of employment. The conditions established by the award, like those of all other contracts of employment, are therefore safeguarded by the provisions of civil law.

The Act provides that in certain cases an award of an arbitration board may be quashed.

Side by side with the normal arbitration procedure mentioned above, the Act of 1921 made transitional provision for special arbitration procedure "in order to ensure the normal regulation

of work on the land " This procedure was made permanent by the Act of 18 July 1924, concerning special arbitration boards, which provides for *compulsory* arbitration when a settlement cannot be reached by the ordinary methods of conciliation and arbitration.

The special board consists of a chairman appointed by the Minister of Labour and one representative each of the Minister of Agriculture and the Minister of Justice. The three Government representatives are assisted by equal numbers of representatives of the employers' and workers' trade associations in the district concerned in the dispute. But if difficulties are encountered respecting the appointment of the representatives of the parties or their participation in the proceedings, the board may meet and issue valid decisions even if it is composed solely of the three Government representatives.

As in the case of other arbitration awards, the working conditions laid down by the board are binding for not more than one year. They are, moreover, automatically annulled by the subsequent conclusion of a collective agreement by amicable arrangement between the parties.

§ 3. — Results and Opinions

The following table gives some figures relating to strikes between 1921 and 1930. It shows the number of strikers, days lost and undertakings affected.

Year	Number of strikes	Number of undertakings affected	Number of strikers	Working days lost
1921	720	9,143	479,327	4,117,925
1922	800	8,093	607,011	4,630,833
1923	1,263	7,451	849,051	6,378,680
1924	915	5,400	564,134	6,544,852
1925	532	1,910	148,527	1,284,553
1926	590	2,827	145,493	1,422,540
1927	616	3,855	234,938	2,455,270
1928	769	5,230	354,018	2,787,775
1929	488	3,894	214,493	958,287
1930	322	1,666	50,399	367,711

According to the report of the Labour Inspectorate for 1928¹, the results of the strikes registered in 1928 were as follows : 23 per

¹ MINISTERSTWO PRACY I OPIEKI SPOŁECZNEJ : *Inspekcja Pracy*. 1928.

cent. were unsuccessful, about 58 per cent. were partially successful and 17 per cent. entirely successful. The results of 20 strikes were unknown. The report does not supply any general information for the preceding years, but gives some figures on industrial strikes, which represent from 90 to 95 per cent. of the total. In industry the proportion of unsuccessful strikes was only 23 per cent. in 1927, as compared with 30 per cent. in 1926 and 31 per cent. in 1925 ¹.

The report also contains some information on the chief causes of strikes during the year under review. About 62 per cent. of the strikes arose out of demands for higher wages, 8 per cent. were called to secure the observance of conditions laid down by the Act and 5 per cent. to secure that of the eight-hour day.

As regards the intervention of the labour inspectorate and other bodies for mediation in collective labour disputes, the table below gives some general figures for the period 1924 to 1928 ².

Year	Industry				Agriculture			
	Disputes followed by strikes	Total number of disputes	Number of under-takings affected	Number of workers affected	Disputes followed by strikes	Total number of disputes	Number of under-takings affected	Number of workers affected
1924	574	3,283	9,667	484,301	153	1,039	8,095	111,794
1925	288	2,290	4,023	308,435	134	893	6,195	54,684
1926	431	2,115	4,935	331,572	42	583	5,826	39,525
1927	502	2,128	7,221	382,657	23	416	¹ 4,876	¹ 28,514
1928	644	2,328	10,819	361,162	27	398	3,854	25,569

¹ These two figures are doubtful; the 1928 report, which for purposes of comparison reproduces the figures for the previous year, gives only 3,676 undertakings and 22,714 workers affected by strikes in 1927.

The majority of the above disputes were settled by the labour inspectors. Even in agriculture, where arbitration boards have been established under the law, not more than one sixth of the cases have been referred to these bodies, while as a rule (95 per cent. of the boards convened in 1928) the labour inspector himself acts as chairman of the board. For agriculture, the reports contain the following information on the results achieved by the various agencies for mediation during the last three years under review. Among the disputes that the labour inspectors considered without convening an arbitration board, 51 per cent. were settled by means of conciliation in 1926, 56 per cent. in 1927 and 54 per cent. in 1928. Among the disputes in which conciliation failed, 11 per cent.

¹ *Ibid.*, 1927.

² *Ibid.*, 1925, 1926, 1927, 1928.

in 1926, 25 per cent. in 1927, and 21 per cent. in 1928 were referred to the courts or other bodies. Action taken by the arbitration boards had the following results : in 1926, an agreement was reached in 49 per cent. of the disputes considered, 5 per cent. of the awards were annulled and in 46 per cent. of the cases it is stated that " partial satisfaction " was given. In 1927, the corresponding figures were 20 per cent., 6 per cent. and 74 per cent. Finally, in 1928, 83 per cent. of the disputes were settled and " partial satisfaction " was given in 17 per cent. of the cases.

In a recent article ¹ on the present condition of Polish agricultural workers, Mr. J. Gnoński, Chief of Service, in the Ministry of Labour and Social Assistance, expresses his views on the evolution and present importance of conciliation and arbitration machinery. He points out that as a result of the exceptionally difficult situation of agricultural wage earners (especially in former Russian Poland) the Polish Government was from the outset obliged to establish conciliation agencies for the purpose of avoiding stoppages of work. A necessary corollary of this system was the legal recognition of the trade associations, without whose assistance it was impossible to ensure the observance of the agreements reached.

Referring to the *juridical value* of the bodies for conciliation created by the Act of 1 August 1919, the author expresses the following opinion :

" The fact that disputes regarding the observance of collective agreements must be referred to the district conciliation boards confers on these bodies something of the status of agricultural labour courts. If the question is considered impartially, some doubts may be expressed as to the value of the arbitration boards as permanent judicial organs.

" The main reason for the establishment of special courts to deal with labour disputes is the need of a speedy settlement of such disputes. The arbitration boards, which do not possess the necessary authority to make their decisions enforceable, do not fulfil this requirement. Moreover, as they are professional bodies, composed of a relatively large number of persons representing employers and workers (at least seven persons), most of whom have had no legal training of any kind, there is no doubt that these boards, generally speaking, are less qualified than the ordinary courts to give a considered opinion on the suits referred to them.

¹ J. GNOŃSKI : " Die Landarbeiterfrage in Polen ", in *Vierteljahrshefte der Polnischen Landwirtschaft*, Vol. I, No. 2, Jan. 1930, pp. 28 et seq.

" At the same time it cannot be denied that these institutions are of social value. The essential social function of the arbitration boards is to ensure the enforcement of collective agreements. Indirectly they help to prevent disputes between employers and workers on the observance of collective agreements."

§ 4. — Summary

In Poland no general Act on conciliation and arbitration has as yet been passed. In the districts which, up to the end of the war, were under Prussian rule the German legislation on the subject still remains in force. In the rest of the country the amicable settlement of collective disputes is undertaken by the labour inspectors, who exercise the function of conciliator in addition to the other duties assigned to them by the Legislative Decrees issued by the Government.

In former Russian and Austrian Poland special legislation has been passed to regulate conciliation and arbitration procedure in collective disputes in agriculture. These laws introduce a twofold system of conciliation and a twofold arbitration procedure. Conciliation proceedings are instituted, either before the inspector alone or before a conciliation board convened to consider the dispute. As regards arbitration, besides the ordinary proceedings before a board that, like the conciliation board, represents the parties to the dispute, the Act also provides for compulsory arbitration in cases of failure to reach agreement by the methods already mentioned. Compulsory arbitration proceedings are instituted before a special board, composed of three Government representatives in addition to the members appointed by the parties to the dispute.

A comprehensive Bill, applicable to the whole of the country, is at present under consideration by Parliament.

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BALTIC STATES

(ESTONIA, LATVIA, LITHUANIA)

Historical Development

When the modern industrial development of Europe began, what are now known as the Baltic States of Estonia, Latvia and Lithuania belonged to the Russian Empire, and this fact justifies the treatment in common of their historical development. It must nevertheless be remembered that before the coming of Russian rule the history of these three countries was not one and the same. Latvia and Estonia were formerly territories of the Teutonic Order of Knights, and the advantages of the coast favoured trade and industry and brought these countries into close contact with the Hanseatic League. Lithuanian interests, on the other hand, were predominantly continental. It played a part in the history of Poland, and entered into union with that State at the end of the Middle Ages. Before that time it was politically independent — the only one of the Baltic States to be so.

Agriculture is in all three States the most important industry. Until the end of the war large estates predominated and the landowners possessed besides their estates many privileges, public and private. They had a permanent monopoly of brewing and distilling, hunting and fishing. Their voice was also all-important in legislation and administration, for with landed nobility went the right to elect the members of the *Landtag* (Parliament). These social contrasts were accentuated by certain contrasts in nationality. In Estonia the majority of the large landowners were Germans, while in Lithuania they were mostly Poles ; in Latvia, where 48 per cent. of the total area was in the hands of 820 families, they were either Germans or Poles.

These conditions aroused dissatisfaction in wide circles of the population and are considered to be the reason why the Baltic countries, which were culturally in advance of the rest of the Russian Empire, played a particularly vigorous part in the popular movement of 1905.

Besides agriculture a not unimportant industrial development took place in the last thirty years of the nineteenth century on the Baltic coast, chiefly in the working up of goods for re-export — timber, flax and animal products in particular. The steady market provided by Russia favoured also the growth of the engineering and chemical industries.

The great war and its consequences brought with them a complete change in these conditions. The agrarian reforms carried out in each of the three States after the declaration of independence caused the number of agricultural labourers to fall considerably, while that of independent proprietors multiplied. The creation of thousands of small farms and the growth of the intensity with which the land was worked brought about a big demand for credit. To be able to meet this the three States were compelled at the beginning of their existence to give up the idea of rendering any considerable aid to their industries, which had been completely destroyed by the war. The reconstruction of the latter without State assistance proved particularly difficult, for the Russian market was lost and others had to be found instead.

Despite these obstacles the three States succeeded in breathing new life into their industries, though it is true that these now give an impression completely different from that made before the war. A process that is typical of the structural transformation of industry in the three Baltic countries can be seen most plainly in Latvia, where small instead of large or medium-sized undertakings are now the rule. Before the war there were in Latvia some 120 workers to an undertaking ; now the average is only 20.1. This development did not favour the growth of machinery for conciliation or arbitration in collective disputes. The large number of undertakings and the decreased size of the staffs was a reason for leaving the settlement of collective disputes more than in other countries to direct negotiation between the interested parties. This explains the fact that in not one of the three States has a systematic regulation of conciliation and arbitration, covering all industries, come into being.

ESTONIA

§ 1. — Basic Facts

The Republic of Estonia extends over 47,588 square kilometres, of which some 3,800 are accounted for by the Islands of Ösel, Dagö and Mön. There are about 1,170,000 inhabitants, only 15.7 per cent. of whom earn their living in industry. More than half of this total, 59 per cent., are occupied in agriculture.

The trade union movement suffered a serious setback in 1924 by reason of the discovery of a Communist conspiracy. According to official figures 561 trade unions had registered on 1 January 1929 as against 370 at the end of February 1925. On 31 December 1928, 29 trade unions, with 5,506 members in all, were affiliated to the Estonian Federation of Trade Unions (*Eestimaa Jöölisümlingute Kesklit*), which is itself affiliated to the International Federation of Trade Unions.

The principal employers' organisations are the Estonian Manufacturers' Association and the Association of Medium and Small-scale Industries ¹.

§ 2. — The System in Force

The Estonian conciliation and arbitration system rests on two bases : trade and industry come under the Act passed by the short-lived Russian revolutionary Government of 5 August 1917, agriculture under the Act of 1 November 1921 ².

(a) The Act of 5 August 1917 was supplemented for Estonian territory by an Order concerning labour inspectors, issued on 19 December 1918, according to which it is part of the duty of these inspectors to decide disputes between employers and workers. They have in such circumstances to arrange for the institution of conciliation and arbitration boards.

¹ Cf. INTERNATIONAL LABOUR OFFICE : *Freedom of Association*, Vol. III, pp. 253 et seq.

² *Legislative Series*, 1921, Part II, Est. I.

In cases of dispute, employers and workers may, by application to the labour inspector, have their differences brought before a conciliation board. The inspector has then to inform the other party of the application and require him to state within forty-eight hours whether he will take part in the proposed conciliation proceedings. Should his answer be in the affirmative, the inspector invites the parties to appoint representatives for the formation of a conciliation board ; should he refuse, the inspector has to publish the fact in the daily press. The inspector is also empowered in his official capacity to summon the parties to form a conciliation board without their application, and can also form permanent boards for the settlement of future disputes. Should either employers or workers object to the foundation of permanent machinery for conciliation, the inspector has to publish this fact too in the daily press.

The procedure before the conciliation board is settled *ad hoc* by the representatives of the two parties. Should the board come to no decision, it can propose to the parties to go before an arbitration court and can assist them, if they so desire, in its constitution. Such a court is composed of an equal number of employers' and workers' representatives and an impartial chairman chosen by the other members of the court.

(b) For the settlement of collective disputes in agriculture, special regulations have been in force since the passing of the Act of 1 November 1921. This Act set up " district joint commissions " and a general joint commission for the whole country. The former have to draft proposals for conditions of employment in agriculture (minimum wages, daily working hours, overtime conditions, lists of working and rest days) and to transmit these at intervals to the general joint commission.

According to section 19 of the Act, the district joint commissions have to hold ordinary and special sessions, the former once a year, in December at the latest, the latter as required. The Act does not state exactly when the special meetings are to be held, but there can be little doubt that they are intended to take place when an exceptional economic situation makes a change in conditions of employment seem necessary in order to avoid a labour dispute. In the light of section 19 of the Act the agricultural district joint commissions appear as a means of averting and if necessary of settling labour disputes ; particular interest attaches to this fact, for agriculture is the most important source of production in Estonia, as in the other Baltic States.

§ 3. — Results

The conciliation system handed down from the Russian revolution has been put into practice in a few cases only. More favourable results have been obtained in the prevention of disputes in agriculture by the help of the district commissions. The number of labour disputes in Estonia may be gathered from the following strike figures compiled by the Statistical Office of the Estonian Republic :

Year	Number of strikes	Workers involved	Undertakings involved	Working days lost
1922	—	5,623	29	42,162
1923	—	3,492	35	10,299
1924	16	1,568	16	4,831
1925	16	904	16	2,539
1926	14	660	14	1,196
1927	5	218	5	3,067
1928	5	1,098	43	49,336
1929	16	1,915	—	4,386
1930	7	154	—	338

The number of workers and of lost working days applies only to the workers directly affected. The data were collected from the parties concerned and calculated by the Statistical Office.

LATVIA

§ 1. — Basic Facts

The total surface of Latvia is 65,791 square kilometres. The population was, at the end of 1927, estimated by Dr. C. Ballod ¹ at about 1,880,000. No census has been taken since that date. The number employed in industry in 1926 was 57,000.

Among employers' organisations the Riga Manufacturers' Alliance included in 1929 the owners of 641 undertakings with 15,866 workers ; the medium-sized and smaller undertakings are organised in the Association of Latvian Industrial Employers and Handicraftsmen. There are also many associations in particular industries.

Most of the organised workers belong to the " free " or social democratic trade unions, which are affiliated to the Central Office of Latvian Trade Unions. This included 25 unions with 25,524 members in 1930. A few free trade unions (teachers, dockers, engineers) do not belong to the Central Office. They are described as " independent ". There are also in Latvia " Nationalist " and " Left " trade unions, whose membership is not exactly known ².

§ 2. — The System in Force

The Latvian conciliation system, like much of that in Estonia, follows Russian legislation. For details of the provisions of the law, therefore, reference may be made to the description of the Estonian system given above. Latvian experience of the Russian Conciliation Act was, however, less satisfactory than in Estonia. This may be seen particularly from the history of the Riga dockers' strike in the spring of 1920. The rapid depreciation of the currency led at that time to an extraordinary rise in the cost of living with

¹ *Letlands Ekonomist*, 1928.

² Cf. INTERNATIONAL LABOUR OFFICE : *Freedom of Association*, Vol. III, pp. 264 et seq.

which wages could not catch up. The trade unions in Riga applied to the Ministry of Labour in order to obtain the establishment of a permanent conciliation institution. The employers' organisations agreed, and after various discussions in common under the presidency of an official of the Ministry of Labour, it was arranged to establish a permanent "Conciliation Chamber" in Riga. The constituent document was signed on 10 May 1920 by representatives of the employers' and workers' organisations.

The parties agreed that the activities of the Chamber should be governed by the Russian Act of 1917, together with the following additional regulations: For the proceedings, each party elects two representatives for discussion and three for the final vote. The Central Office of Trade Unions in Riga sends two, and the trade union actually concerned one representative. For the employers, the Riga Manufacturers' Alliance, the Association of Latvian Industrial Employers and Handcraftsmen, and the particular organisation concerned with the dispute each send one representative.

In case of dispute the parties must first of all apply to their trade organisation. If this body cannot bring about an agreement, it must take the case via the labour inspector to the Conciliation Chamber.

The agreement of 10 May 1920, too, refrained from making conciliation compulsory; indeed, the proceedings are possible only if both sides agree to them. The only means by which the labour inspector can bring pressure to bear upon a recalcitrant party is to publish its attitude in the daily press.

§ 3. — Results

The Riga Conciliation Chamber failed even in the attempt to settle the dispute between the dockers and their employers in 1920 — the very purpose for which it had been founded. Since that time there have been repeated labour disputes in the industry, but the Chamber has not been able to make any important contribution to their settlement. To begin with, the representatives of the workers frequently did not attend the sessions; the employers' representatives followed their example; so that finally, there ceased to be any regularity in its sittings. The lack of any sort of compulsion to submit to conciliation proceedings is given as a

cause of failure of the Chamber. Another circumstance which helped to make it useless was that its decisions carried with them not the least guarantee of execution.

The decisions taken by the conciliation committees set up by collective agreements had also, until 1927, no special legal guarantees. Only so far as the activities of these committees could be brought under the law of contract in civil law had they any legal force. The attempt to establish conciliation and arbitration by non-official means must therefore have led to the same failure which met the attempts to revive the Russian legislation of the transition period, had the Emergency Order of 4 October 1927 on collective labour agreements¹ not been issued.

This Order includes among other things a conditional instruction to the effect that provisions concerning the settlement of differences of opinion and of disputes may also be included in collective agreements (section 5, second sentence). From section 10 of this Order it is clear that the provisions of a collective agreement bind the contracting parties even when they are Government authorities. The individual members of an organisation which has concluded a collective agreement are also bound by that agreement, for the effect of section 5 of the Order taken in conjunction with the first sentence of section 10 is that if a collective agreement contains provisions on conciliation and arbitration, these are binding both upon the organisations party to the agreement and upon the individual members of such organisations.

These regulations are strengthened still further by the provision of section 10 that "the organisation and its individual members" are jointly liable for the fulfilment of the collective agreement. Any failure on the part of the organisation or its members to participate in the conciliation and arbitration committees mentioned in the collective agreement may thus have serious results for them, and may in particular render them liable for damages.

These regulations make conciliation to a certain extent obligatory, though it should be remarked that the Order of 4 October 1927 on collective agreements covers only members of the organisations party to the agreement and not outsiders. This follows from the second sentence of section 10, which stipulates that the individual members of organisations may, by giving due notice of their resignation to their organisation, be exempt from complying with the provisions of the agreement. The period of notice specified

¹ *Legislative Series*, 1927, Lat. 3.

in the Order is a fortnight. This is a defect of the system and can have serious effects on the settlement of collective disputes by the institutions set up by collective agreement. The system can function only if both employers and workers remain loyal to their own organisations.

The Emergency Order concerning collective agreements has not yet been in force long enough to allow of a final judgment ; but the following strike statistics published by the Ministry of Public Welfare show that so far it has failed to produce any considerable change in the development of labour conflicts.

Year	Workers involved	Undertakings involved	Working days lost
1922	3,554	41	31,505
1923	13,566	199	78,220
1924	9,523	87	95,988
1925	3,224	53	24,552
1926	5,065	53	63,968
1927	5,273	95	60,267
1928	13,431	179	62,254
1929	26,462	362	45,838
1930	1,547	38	12,077

LITHUANIA

§ 1. — Basic Facts

The Republic of Lithuania, including the autonomous territory of Memel, covers 55,658 square kilometres and has 2,317,000 inhabitants. Of the 362,000 workers of Lithuania, 242,000 are engaged in agriculture. In 1919 and 1920 workers' organisations were founded in Kovno (Kaunas) and Shevli (Siauliai), the peak of the labour movement coming in 1920, when some 38,000 workers were organised in trade unions. The following years brought a decline, and at the end of 1926 the " free " unions, according to their own data, had a membership of 18,486. There were also Christian workers' unions, but their representative character was affected by the adhesion of a large number of peasant farmers.

A manufacturers' association watches the interests of the employers.

Since the coup d'état of 16 December 1927 the activity of the trade associations has been limited ¹.

§ 2. — The System in Force

On 14 November 1924 an Act on labour inspection ² was passed in Lithuania.

According to section 9 of this Act the labour inspector can intervene *ex officio* in disputes between employers and workers in order to settle them, and if necessary to arrive at a decision binding on the parties.

With this object the inspector should enquire into the dispute on the spot, and attempt to bring the parties to an agreement. In widespread disputes, he should constitute conciliation boards and arbitration courts. In all the decisions and steps he takes

¹ Cf. INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Vol. III, pp. 273 et seq.

² *Legislative Series*, 1924, Lith. 3.

on the basis of section 9, the inspector has to follow the directions of the Chief Labour Inspector, who is himself directly subordinate to the Ministry of the Interior ¹. Political authorities have thus a final voice in collective labour disputes in Lithuania.

MEMEL TERRITORY

The Territory of Memel, separated from Germany since 15 February 1920, was joined to Lithuania by the decision of the Ambassadors' Conference in February 1923. It extends over 2,650 square kilometres and has about 145,000 inhabitants. German conciliation legislation in the shape of the Order of 23 December 1918 on Conciliation in Labour Disputes (*Reichsgesetzblatt* ² p. 1456) is valid for the Territory. This system has, however, been considerably supplemented by an Order of 9 August 1922 (*Official Gazette for Memel Territory*, p. 785) and by the Administrative Regulations of 12 September 1922 (*ibid.*, p. 961).

The first-named Memel Order made it obligatory on all undertakings employing more than twenty persons to constitute committees representing workers and employees. The duties of such committees are described in section 10 of this Order, which requires them "to assist in regulating wages and other conditions of employment, unless these are regulated by collective agreement". Disputes arising in this connection are decided in the first instance by conciliation committees. The parties have a legal right of appeal against such decisions, in which case they go before the arbitration court for the Territory. This court was set up, with its seat at Memel, by the Administrative Regulations of 12 September 1922, section 1, as an "Appeal and Revision Court for decisions made by conciliation committees".

Summary

The machinery for arbitration and conciliation in collective labour disputes has not yet reached a high state of development in the Baltic States. Only Estonia has arrived at systematic

¹ ABRAMSON : *Zeitschrift für Ostrecht*, 1928 (VII), p. 934.

² *Bulletin of the International Labour Office* (Basle) 1918, Vol. XIII, p. 10.

legislation, and even this is limited to agriculture. In Latvia, the Russian transitional legislation is still valid, but under the completely altered conditions it has achieved no great success, conciliation being left very largely to the parties themselves. In Lithuania the question of conciliation and arbitration was settled as a subsidiary matter in course of framing the Labour Inspection Act.

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DENMARK

§ 1. — Economic Background and Development

The total area covered by the Kingdom of Denmark is about 42,926 square kilometres. According to the census of 1925, it has a population of 3,434,555.

Denmark is a country of small and medium-sized holdings, in which the peasant class for a long time formed the major part of the population. Fishing also employs a large number of the inhabitants. In 1925, 392,000 persons, or roughly 30 per cent. of the working population, were engaged in industry. One-third of the factories are equipped with mechanical power. The principal forms of industry are connected with the working up of agricultural products and the most important branches are sugar refining, distilling, brewing, flour milling and the manufacture of margarine, Shipbuilding is also a particularly important industry.

Thanks to the fact that the right of association has been recognised since 1849, Denmark has a widely developed system of employers' and workers' organisations. The employers' associations are grouped in the Danish Employers' Federation (*Dansk Arbejd-giverforening*) and the workers' unions in the Danish Trade Union Federation (*De samvirkende Fagforbund i Danmark*) which in 1929 included 55 federations with 250,162 members, of whom 210,439 were men and 39,723 women. There are also a certain number of independent unions with a total membership of about 80,000 ¹.

The trade associations instituted systems of conciliation and arbitration at a very early date. As early as 1898, a joint body for the settlement of labour disputes was set up by the Trade Union Federation on the one hand and the Employers' Federation on the other. It consisted of three representatives of each party, of whom two on either side had to be members of one of the organisations. In the event of a dispute between the trade associations affiliated

¹ Cf. INTERNATIONAL LABOUR OFFICE : *Freedom of Association*, Vol. III, pp. 281 et seq.

to either of the central federations, the Committee had to decide whether the collective agreements had been respected.

In the following year, a general lock-out affecting fourteen occupations in the building trade led to the conclusion in September 1899 of an agreement which now forms the basis of industrial relations in Denmark. It was then that provision was made for the establishment of the Permanent Arbitration Court (*den permanente Volgiftstret*), whose principal function was to consist in judging all cases of infringement of the September agreement. Pending its establishment, this function was entrusted to the Copenhagen Court of Appeal. An Act of 3 April 1900 laid down provisions for the calling of witnesses before the arbitration tribunals, but it was not until 12 April 1910 that an Act was passed setting up the Permanent Arbitration Court. This Act was drafted on the basis of a report submitted by a new joint committee set up on the occasion of a dispute in the printing industry in 1908. It was amended on certain points by the Act of 4 October 1919 concerning the Permanent Arbitration Court, which constitutes the legislation on arbitration at present in force.

As regards labour disputes, the Act of 12 April 1910 concerning the nomination of a conciliator for labour disputes provided for the appointment by the Minister of the Interior of one conciliator for the whole country for a period of two years at a time. The Act of 21 December 1921 concerning intervention in labour disputes fixed the number of official conciliators at three. This Act was originally intended to expire at the end of 1925, but was then prolonged until 1 December 1926, by which date it was expected that the new Bill prepared by the "Grand Committee on Labour" would have been debated in the Riksdag. The Bill introduced by the Social Democratic Government of that time was rejected, and the operation of the existing Act was prolonged from year to year. A new Bill was introduced, but was equally unsatisfactory both to the employers, who under its terms would have been obliged to give the conciliation bodies information on the economic position of their undertakings, and to the workers, who would have had to empower the negotiators or other less important bodies to conclude binding agreements. Finally, a compromise was adopted, based in the main on the Act of 1921. It includes certain additional clauses, however, notably those enabling the conciliator to make his mediation conditional on agreement not to declare a stoppage for a week. This Bill was adopted unanimously by both Chambers of the Riksdag and constitutes the legislation at present in force.

§ 2. — The System in Force

In Denmark an official conciliation system is provided under the Act of 28 February 1927¹. No statutory provision is made for arbitration proper in disputes concerning the regulation of conditions of employment, wages or other circumstances connected with labour that are not covered by collective agreement, that is in "disputes about interests".

Disputes concerning the validity or the interpretation of collective agreements or "disputes about rights" are covered by the Act of 4 October 1919 concerning the Permanent Court of Arbitration². Although this Act deals only with disputes about rights and not those about interests (according to the distinction drawn in most of the Northern countries) the procedure it lays down is worth noting here.

Infringements of the agreement of September 1899 are also dealt with under the Act of 4 October 1929 concerning the Permanent Court of Arbitration.

CONCILIATION

The Act of 28 February 1927 respecting conciliation in labour disputes provides for the appointment of three conciliators for the whole Kingdom, nominated for three years at a time and re-eligible for appointment, and of one substitute conciliator. The appointments are made by the Minister of Social Affairs on the proposal of the Permanent Court of Arbitration. The conciliators elect from among themselves a chairman who directs the proceedings of the Conciliation Committee for a year. The Committee sends an annual report on its activities to the Minister of Social Affairs. Normally, each conciliator performs his functions as mediator without the collaboration of the other conciliators. Nevertheless, if a labour dispute is of considerable public importance, all three conciliators may decide to intervene in the dispute in concert.

Any dispute concerning the competence of the conciliators may be submitted to the Permanent Court described below in connection with justiciable disputes. The conciliator may ask the Court to intervene for the purpose of hearing witnesses.

¹ Cf. *Legislative Series*, 1927, Den. 1.

² *Annuaire de la législation du travail*, 1914-1919, Vol. I, p. 306.

The conciliators meet as often as required, at the invitation of the chairman. They fix, by standing orders drawn up for each year or for each case, the labour questions in which each conciliator must intervene if occasion arises.

The conciliators must keep in touch with the general conditions of labour and especially with wage conditions. If there is reason to fear a stoppage of work or if such a stoppage has already occurred and the competent conciliator considers that the scope and effects of the strike or lock-out are of considerable public importance, he may summon the parties to enter into negotiations, either on his own initiative or at the request of one of them, in any case in which negotiations have already taken place and have been declared fruitless. In such cases, the parties themselves may designate their representatives, who must, however, be members of the organisations or federations concerned.

In the course of the negotiations between the parties, the conciliator may propose terms of agreement calculated to bring about a peaceful settlement of the dispute. Before submitting a draft settlement the conciliator must discuss its substance and form with two representatives of each of the parties and, if the latter belong to federations, with a representative of each federation concerned. The draft settlement may not be made public without the conciliator's consent until the replies of both parties have been received. The conciliator may refer back to the parties concerned any questions that have not been the subject of actual negotiations on their merits or that are of a special occupational character, and may refuse to continue his mediation until such negotiations have taken place. He also fixes the limit within which such negotiations must be effected.

If, in the course of a dispute in which a conciliator has intervened because a stoppage is feared or has already occurred, any doubt should arise as to the actual facts concerning wages, hours of work, and overtime, the conciliator may require the parties to give explanations.

• Conciliation procedure is not compulsory. The conciliator may require the parties to appear if a strike of considerable importance is feared or has occurred, but no penalties are provided in this connection. When the conciliator offers to mediate, he may require once in every dispute that no stoppage of work shall take place before the negotiations have come to an end, but such requirement may not apply to a period longer than one week. This provision is one of the main changes made in the Act of 1921.

When prolonged negotiations have proved fruitless and terms of settlement have been proposed by the conciliator, acceptance of these terms is not compulsory, but they must be put to the vote in the organisations if the latter so desire. They may not be voted in any form other than that drawn up by the conciliator and the vote must be given as a simple yes or no.

ARBITRATION IN JUSTICIABLE DISPUTES

In Denmark, as has already been noted, a distinction is drawn both in law and in practice between disputes about the substance of a collective agreement, arising in connection with its conclusion or renewal, and disputes about the interpretation or validity of collective agreements. The former, known as disputes about interests, are not subject to official arbitration, and are regulated by special clauses in the collective agreements themselves.

Arbitration in justiciable disputes is effected by the Permanent Arbitration Court set up by the Act of 4 October 1919. The Court has its seat at Copenhagen, but may also sit elsewhere if it considers it expedient. It consists of six ordinary judges, six substitutes, a chairman, a secretary, and two (or, if the Court considers it necessary, three) vice-chairmen. Ordinary and substitute members of the Court are elected half by the Danish Employers' Federation (*Dansk Arbejdsgiverforening*) and half by the Danish Trade Union Federation (*De samvirkende Fagforbund i Danmark*) for a period of two years. The ordinary members thus elected then elect the chairman and vice-chairman for the following year.

Breaches of the agreement of September 1899 (mentioned above, § 1) are compulsorily submitted to the Permanent Arbitration Court. At the request of an organisation, and on condition that no agreement contains provisions to the contrary, the Court also has jurisdiction in cases concerning a collective breach of the labour agreement concluded between a workers' organisation and an employers' organisation or a particular undertaking.

In the event of the declaration of a strike or lock-out that, in the opinion of an organisation, constitutes a breach of agreement, and after the organisation has within five days sent a protest against the strike or lock-out to the organisation, its members, or the undertaking responsible for it, each party has the right to submit to the Arbitration Court the question of the legitimacy of such a strike or lock-out. Similarly, if an organisation considers that a lock-out is being carried out contrary to the agreements

concluded, to arbitration awards or to a decision of the Court, or if a workers' organisation or its members declare or continue a strike contrary to the terms of the agreement, to arbitration awards or to a decision of the Court, the other party may bring an action against them before the Arbitration Court with the object of declaring the stoppage illegal or of having fines inflicted.

Other disputes may also be submitted to the Court, provided that the latter accepts them by a majority of five members, if a general or special agreement has been concluded to this effect between the organisations. If one of the organisations or undertakings forms part of a larger organisation, the proceedings must be instituted by or against the latter.

The Arbitration Court must decide if the act giving rise to the proceedings constitutes a breach of the agreements and in what measure the decision giving rise to the proceedings is contrary to the agreements and therefore null.

The decisions of the Court are binding, and it may inflict fines in accordance with the provisions of the Act. It may inflict on the parties responsible for the breach of an agreement, or for a strike or lock-out contrary to the terms of the agreement, a fine which, if injury is proved, is payable to the victim, and in other cases to the party bringing the action. If the breach consists in omission to pay a sum due, the Court may, instead of inflicting a fine, condemn the offending party to the payment of this sum. Unless an agreement exists to the contrary, a union can be made legally responsible only if it has taken part in the act giving rise to the proceedings.

If the offender refuses to submit to arbitration a case which, under the terms of the agreement in force, should be settled by that means, this constitutes a particularly aggravating circumstance.

PROVISIONS FOR ARBITRATION LAID DOWN IN COLLECTIVE AGREEMENTS

Disputes concerning the interpretation of an agreement are subject to the conciliation and arbitration procedure laid down in collective agreements. These generally provide that all such disputes shall be submitted to a permanent conciliation committee consisting of an equal number of representatives of each of the parties to the agreement, and set up for the particular industry concerned. If the committee does not succeed in effecting a settlement, the case is referred to the organisation itself, which

must continue negotiations. Failing a settlement through these negotiations, the dispute is normally submitted to an arbitration board for the occupation concerned, at the request of one of the parties. These arbitration boards are composed of an equal number of representatives of each of the parties and an independent arbitrator nominated by the parties themselves, or, in the event of their inability to reach agreement, by some outside authority, generally the Permanent Arbitration Court.

The Permanent Arbitration Court cannot be looked upon as a court of appeal from the decisions of the arbitration boards set up by the different industries, and cases that belong to the latter are usually referred to the ordinary courts of law.

§ 3. — Results and Opinions

According to the Statistical Yearbook for 1931, published by the Danish Statistical Office, the figures relating to labour disputes for the years 1921 to 1930 are as follows :

Year	Strikes and lock-outs	Workers affected by strikes	Workers affected by lock-outs	Working days lost	Strikes and lock-outs in which the official conciliator intervened as mediator
1921	110	13,356	34,791	1,321,000	20
1922	31	640	48,219	2,272,000	6
1923	58	1,941	1,941	20,000	5
1924	71	8,993	765	175,000	13
1925	48	35,477	66,854	4,138,000	18
1926	32	975	75	23,000	3
1927	17	537	2,814	119,000	2
1928	11	469	—	11,000	4
1929	22	1,040	—	41,000	7
1930	37	5,349	—	144,000	14
1931 ¹	19	—	3,692	246,000	—

¹ Provisional figures. Cf. *Industry and Commerce*, 4 March 1932, No. 54, p. 3.

During the first ten years of its existence (1910-1920) the Permanent Arbitration Court dealt with 262 cases. Seventy per cent. were settled by an award, 20 through conciliation, and in 10 per cent. of the cases the charge was withdrawn. Of the 401 cases submitted to the Court during the years 1921-1924, 187 were settled through conciliation, and in 44 cases the charge was withdrawn.

For the five years from 1925 to 1929 the annual results were as follows :

Year	Total number of cases	Settlement through conciliation	Charges withdrawn
1925	115	51	20
1926	127	33	14
1927	93	41	6
1928	90	36	14
1929	89	36	4

The present system appears on the whole to have proved satisfactory to the persons concerned. Any criticism to which it has been subjected has been directed mainly to two points.

In the first place, it has occasionally been noted that the possibility of resorting to conciliation proceedings has had the effect of preventing the parties concerned from concluding new agreements, since each party hopes to obtain more satisfactory terms by means of conciliation than by direct negotiation.

Secondly, it has been maintained that the conciliation committees in their present form lack adequate powers of enquiry to form a sufficiently objective opinion on the economic position of the parties.

Both employers and workers, however, are equally strongly opposed to the introduction of a compulsory arbitration system.

§ 4. — Summary

The conciliation and arbitration system in operation in Denmark distinguishes, as is the case in most Northern countries, between disputes concerning interests and disputes that are justiciable because they constitute a breach of a collective agreement or concern the interpretation of an agreement in force. For disputes arising in connection with the fixing or alteration of the terms of agreements the law allows the associations to have recourse to the official conciliator. A provision peculiar to Danish law is that introduced by the 1927 Act concerning conciliation, which allows the conciliator to require as a condition of his mediation that for a period of seven days there shall be no stoppage of work.

As regards arbitration, besides cases voluntarily or compulsorily subject to the Act on the Permanent Arbitration Court, the

arbitration procedure laid down in collective agreements for the interpretation of the provisions contained in them plays a very important part. The arbitration system in force in Denmark is thus partly unofficial. Nevertheless, collective agreements often provide that the Court shall act as a court of final appeal in cases for which it has no compulsory jurisdiction.

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FARÖE ISLANDS

The provisions applicable to the Faröe Islands, which, for administrative purposes, form a Department of the Kingdom of Denmark, are laid down in the Act of 31 March 1928 concerning conciliation in labour disputes. This Act provides for the formation of a committee of eleven members, consisting of representatives of the most important organisations of employers and wage earners. A majority of seven members of this committee nominates a conciliator for the islands as a whole. Conciliation procedure is similar to that in the rest of the Kingdom.

ICELAND

Unions have been set up in most of the fisheries in Iceland and have formed themselves into a National Federation, whereas the employers are grouped in various associations. The development of the fishing industry and the growth of the trawler fleet have brought about an increase in the number of strikes, lock-outs and labour disputes in general.

Before the passing of the 1925 Act on conciliation in labour disputes ¹, various Bills had been introduced into Parliament, one of which proposed the introduction of compulsory conciliation and arbitration for all labour disputes.

The Act of 27 June 1925 introduced conciliation procedure similar to that in operation in Denmark. It provides, however, for the appointment of a single conciliator by the Minister of Economic Affairs, on the proposal of a committee composed of five members chosen by the workers' union, five by the general employers' association and one by the Supreme Court.

This Act is chiefly applicable to trawl-owners and to persons in their employment.

¹ *Legislative Series*, 1925, Icc. 2.

NORWAY

§ 1. — Economic Background and Development

In 1929, Norway, with an area of 323,993 square kilometres, had a population of 2,821,000. According to the census taken in 1920, 33.25 per cent. of the inhabitants were employed in agriculture, including horticulture and forestry. At the same date nearly 100,000 persons were engaged in shipping and fishing.

Industry proper, which is of comparatively recent growth, is now one of the most important economic activities of the country. In 1920 it employed 29.4 per cent. of the population, and since that date, thanks to the increasing development of water power, it has steadily continued to progress. The most important industries are wood (including the manufacture of cellulose, paper pulp, and paper), metals, chemicals, textiles, and foodstuffs (canning, brewing, etc.). In the main, industrial activity is not concentrated in the large towns, but scattered over the whole country, including the rural districts.

Both employers and workers have formed extensive organisations, which have entered into collective agreements for most trades. The central employers' organisation, the Norwegian Employers' Federation (*Norsk Arbeidsgiverforening*), covers industrial employers throughout the country. The shipowners have created their own organisation (*Norsk Rederforbund*), as also have the employers in the paper industry and in forestry. The trade unions are grouped into national unions, which in turn form the Confederation of Trade Unions (*Arbeidernes Faglige Landsorganisation*), with a joint secretariat¹.

The first attempts to regulate conciliation and arbitration procedure in Norway date from the end of the nineteenth century. Following a resolution adopted in 1899 by a number of workers' unions, urging that legislation on conciliation and arbitration should be enacted at the earliest possible date, the Government

¹ Cf. INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Vol. III, pp. 303 et seq.

introduced in 1902 a Bill which, besides setting up conciliation and arbitration procedure, also contained provisions dealing with the right of association for trade purposes.

This Bill provided that a conciliation council should be set up to act as mediator in all disputes between employers and workers affiliated to two central organisations. If conciliation were unsuccessful the dispute might with the consent of the parties be submitted to an arbitration court. No stoppage of work might be declared either before conciliation had been tried or during the arbitration procedure. This Bill, introduced by the Liberal Government then in power, was at first opposed by the Conservatives, at whose request an amendment was adopted providing for the protection of unorganised workpeople willing to work during strikes and lock-outs. The Bill so amended was opposed by the workers' organisations and rejected by a small majority.

In 1907 an important dispute broke out in the paper industry, and the workers submitted the matter to the Storting with a request that conciliation procedure should be introduced. This resulted in the setting up of a Royal Commission to enquire into the question, but it was not until 1912, under a Conservative Government, that a Bill was finally introduced.

This Bill drew a distinction between two kinds of collective disputes—those arising out of the regulation of wages, conditions of employment, and all other matters connected with labour not covered by collective agreements, described as disputes about interests, and those concerning the validity, interpretation or existence of a collective agreement, which, since they are based on the conditions fixed by existing agreements, may be described as disputes about rights¹.

A special court was to be set up for the settlement of labour disputes arising out of the interpretation of collective agreements. The Bill proposed to make conciliation and arbitration procedure compulsory in disputes concerning the validity and interpretation of agreements, i.e. disputes about rights, whereas the option of resorting to arbitration procedure was to be left to the parties themselves in disputes about the substance of new collective agreements, i.e. in disputes about interests.

In 1913 a new Liberal Government drafted a Bill providing for compulsory arbitration in all disputes about interests that by

¹ This distinction is still made in the relevant legislation of Norway, Sweden and Denmark.

their nature or extent were such as to endanger public interests. At the request of the secretariat of the Confederation of Trade Unions and the central executive of the Employers' Federation, the question was adjourned pending its examination by a joint committee appointed by the two organisations.

In spite of the fact that the employers' and workers' representatives on this committee were alike opposed to compulsory arbitration, the Government recommended in 1914 that this Bill should be adopted, whereupon the Confederation of Trade Unions decided to declare a general strike as a protest against the introduction of compulsory arbitration. The provisions concerning compulsory arbitration in disputes about interests were therefore omitted, and the Bill became law in 1915. It was only a year later, however, that the first Act on compulsory arbitration was passed.

The Act of 6 August 1915 on industrial disputes set up a Labour Court for the settlement of all labour disputes arising out of the interpretation and validity of collective agreements or claims based on collective agreements. It also made conciliation procedure compulsory in collective labour disputes.

The Act of 9 June 1916, which introduced the compulsory arbitration provisions omitted from the 1915 Act, was provoked by a serious outbreak of stoppages of work, particularly in the mining and iron and steel industries. This Act empowered the Government to order that any dispute affecting important public interests should be submitted to an arbitration court consisting of a chairman and four members. This court might forbid the declaration or continuance of a stoppage of work. The Act was to remain in operation only for the duration of the war.

In 1919, and again in 1920, the Act was prolonged for another year. A proposal to prolong it for a further year was rejected in 1921 by the united votes of the Conservative and Labour parties. In the same year, a strike broke out, of an extent unprecedented in Norway, affecting 120,000 workers, i.e. the majority of the members of the Confederation of Trade Unions. The workers gained nothing from this strike; the Confederation lost nearly a third of its members, and when the Compulsory Arbitration Act again came up for discussion in 1922, the Executive of the Confederation advised the workers' parliamentary representatives to support the Act, which was in fact prolonged for a further year. In 1923, however, both the trade unions and the Labour members of the Storting returned to their former attitude, and the proposal

to prolong the Act was rejected by a majority formed by the parties of the Left and the Conservatives.

The Labour Disputes Act of 5 May 1927¹ amended in certain respects that of 6 August 1915. Under its provisions the party injured by the breach of an agreement is entitled, with the consent of the Labour Court, to declare a strike or lock-out. The Act increases the penalties for unlawful stoppage of work.

In the same year, as a result of serious disputes in the mining, smelting, textile and shoe industries, the Government again introduced a Bill concerning compulsory arbitration, which was passed on 5 May² at the same time as the Labour Disputes Act. It was to remain in operation until August 1929. Like the 1916 Act, it provided for the setting up of an arbitration court consisting of a chairman and four members. This court was to settle by an arbitration award any dispute submitted to it by the Crown which was liable to endanger important public interests, and in which conciliation had been attempted in vain. The provisions concerning the court and its procedure were similar to those contained in the Labour Disputes Act. On its expiry in 1929, the Compulsory Arbitration Act was not prolonged.

§ 2. — The System in Force

The conciliation procedure at present in operation in Norway, introduced by the Labour Disputes Act of 5 May 1927, is official, whereas arbitration procedure, since the expiry of the Compulsory Arbitration Act of 5 May 1927 (i.e. since 1929) depends purely on private agreement between the parties. Under the provisions of the Labour Disputes Act of 5 May 1927, all justiciable disputes concerning the interpretation or validity of collective agreements must be brought before a Labour Court.

Chapter III of the Labour Disputes Act of 5 May 1927 provided for the introduction of conciliation procedure by the appointment by the Crown of one permanent conciliator for the whole Kingdom and one permanent conciliator for every conciliation district. The division of the Kingdom into conciliation districts was to be effected by the Crown. The district conciliators, appointed for a period of three years at a time, are under the authority of the State

¹ *Legislative Series*, 1927, Nor. 1 (A).

² *Ibid.*, 1927, Nor. 1 (B).

Conciliator. A supplementary Act adopted on 8 June 1931¹ provides that the permanent conciliators shall in future act alone, and repeals the provision formerly in force allowing them to form conciliation committees by co-opting assessors from a panel nominated by the trade unions and the employers' associations.

In case of a dispute between a trade union and an employer or employers' association concerning the regulation of conditions of employment, wages, or any other matters connected with labour not covered by a collective agreement, the State conciliator or district conciliator must immediately be informed of the serving of notice to cease work — that is, notice of the termination of a collective agreement by the workers or employer, with a view to the organisation of a strike or lock-out.

A strike or lock-out may not be declared before the expiry of the period of notice, and not in any case until four working days have elapsed since the date when the notification that negotiations had not been begun or had been broken off, or that the notice to cease work had been prolonged, was received by the conciliator.

The notification of the notice to cease work must contain particulars of the subject of the dispute, the undertakings affected by the notice to cease work, the number of employees in each of the undertakings concerned, the date when the notice expires, and whether negotiations between the parties have been begun, are still in progress, or have been broken off.

If negotiations are in progress, notice of any subsequent breaking off must be given in the same manner. The notification must be sent by the trade union, employer, or employers' association which has served the notice. If the person or association concerned is a member of the Norwegian Employers' Federation (*Norsk Arbeidsgiverforening*), the Confederation of Trade Unions (*Arbeidernes Faglige Landsorganisation*), or any other important employers' or workers' association, the notification must be sent through the executive committee of the organisation concerned, which must at the same time forward a copy of it to the other party. If the State conciliator or district conciliator considers that a stoppage of work will prejudice public interests, he must, within two days of receiving the notification, prohibit the stoppage of work until conciliation proceedings have been completed. He must then institute conciliation proceedings without delay.

¹ *Legislative Series*, 1931, Nor. 1.

The conciliator fixes the time and place for the proceedings in the dispute. The session may take place outside the conciliation district, and is held *in camera*.

The parties may appear in person or by means of authorised representatives, not more than three representatives being allowed for each party. Practising barristers and solicitors may not be employed as authorised representatives without the consent of the conciliation authority.

The permanent conciliator dealing with the case must collect all the information necessary for the settlement of the dispute as promptly as possible, and endeavour to the best of his ability to induce the parties to agree to a reasonable compromise. He may call for declarations from the parties and require the production of documents. Witnesses are bound to appear if their place of residence or sojourn is within such a distance from the place where the proceedings are held that it is not necessary for them to travel more than 600 kilometres by railway or 300 kilometres by steamer, or 100 kilometres by any other means of conveyance. The same applies to the parties themselves if they are required to appear in person. Any person who is required to give evidence in the case is bound to serve as an expert on being appointed by the conciliator to do so.

If a compromise is reached, a collective agreement in conformity with it must be drawn up with the co-operation of the permanent conciliator, and signed by the parties or their representatives. Either party may demand that the conciliation proceedings shall be terminated if ten days have elapsed since the prohibition of a stoppage of work was issued, unless the party in question has failed to co-operate duly in the conciliation proceedings. The proceedings must be terminated not more than four days after the sending in of a lawful application.

The conciliation authorities may submit a definitive proposal to the parties for the settlement of the dispute. In case of failure to reach a compromise, the conciliator who has conducted the proceedings may issue a report in whatever manner he thinks fit. If a district conciliator has conducted the proceedings, he must send a report on the case to the State conciliator as soon as possible. This report must contain the definitive conciliation proposal if such proposal was made.

In general, the Act allows no right of appeal against the measures adopted by the conciliators. Any person who is not a party may, however, appeal against a decision requiring him to

make a declaration, take an oath, or give a surety ; to produce documents or other evidence or grant access thereto ; to serve as an expert ; or rendering him liable to pay a fine or costs.

§ 3. — Labour Law Jurisdiction

The procedure for the settlement of justiciable labour disputes is laid down in the same Act as the conciliation procedure summarised above for the settlement of disputes about interests. It may therefore not be out of place to describe it shortly here.

The Labour Court, which has its seat in the capital of the Kingdom, is composed of a chairman, six members, and two substitute members for each member. Appointments are made by the Crown for a period of three years, two members being nominated by the trade unions and two by the employers' associations. Every employers' association with a membership of not less than 100 employers who employ in all not less than 10,000 members, and every trade union with a membership of not less than 10,000 members, has the right to submit nominations for two members of the Court with their substitutes.

The two other members of the Court and the chairman are appointed freely by the Crown, but the chairman and one of these members must satisfy the requirements prescribed for judges of the Supreme Court, while the other may not be employed in any post or occupation making him liable to be considered as a representative of either party. If no nominations are received by the competent Government Department, the appointments are made without nomination. Members of the Court are required to take an oath, and may not be members of the executive committee or the permanent staff of any trade union or employers' association. The Court is not competent to deal with a case or adopt a decision unless all the members are present.

The jurisdiction of the Court covers not only individual labour disputes but also the disputes which are of particular interest in the present connection, namely, disputes concerning the validity, interpretation or existence of a collective agreement or any claim based on a collective agreement, and disputes arising out of the breach of a collective agreement or an unlawful stoppage of work.

Any attempt to settle by means of a strike or lock-out a dispute between a trade union and an employer or an employers' association

respecting the validity, interpretation or existence of a collective agreement, or any claim based on a collective agreement, is forbidden.

If the Labour Court has issued an award declaring that a breach of an agreement or a stoppage of work contrary to the above provisions has taken place, and if the action constituting this breach or stoppage is not brought to an end within four days after the issue of the award, the injured party or the organisation to which he belongs may apply to the Labour Court for its consent to the declaration of a strike or lock-out.

The application must be addressed to the chairman of the Labour Court, who must convene a meeting to discuss it. The Court may not give its consent unless the chairman and at least one of the two members appointed by the Crown without nomination are in favour thereof.

Disputes within the jurisdiction of the Labour Court may not be brought before any other court. If a collective agreement has been concluded by a trade union or an employers' association, the rights and liabilities of the individual members under the collective agreement may not be enforced otherwise than by means of an action brought by or against the union or association on behalf of the person concerned. If a member of a trade union or an employers' association is guilty of a breach of a collective agreement or of an unlawful stoppage of work, the union or association is liable, unless it proves that it was not itself responsible, or that it endeavoured by all means in its power to prevent the offence in question.

It is the duty of the Court to assess compensation for the breach of a collective agreement or for an unlawful stoppage of work. In so doing, it must take into consideration not only the extent of the damage, but the proven guilt of the defendant and also any unlawful action on the part of the injured party.

The provisions laid down for conciliation procedure in respect of the duty of parties and witnesses to appear also apply to the Labour Court. The proceedings take place in public, unless the Court decides to hold them *in camera*, as it may do in any case involving discussion of the secrets of a business or association.

The decisions of the Court are adopted by a majority vote. The award must be issued as soon as possible after the proceedings are closed. No appeal is allowed against the awards of the Court, which may be enforced in conformity with the rules applicable to the decisions of the Supreme Court. Appeal may, however, be

made to the Supreme Court, or to the Appeal Committee of the Supreme Court, against any decision disallowing an action or opening the proceedings therein.

The Act provides for penalties in the form of fines up to a maximum of 25,000 kroner or imprisonment for not more than three months for any person who supports a resolution to initiate, continue, support with contributions, or approve an unlawful strike or lock-out, or who co-operates therein. The same penalties are imposed on any employer or representative of an employer who institutes or continues an unlawful lock-out. On the other hand, the mere participation by a worker in an unlawful strike is not punishable. Further penalties are provided for contempt of court, breach of the obligation to observe secrecy, and failure to appear without sufficient reason.

§ 4. — Results and Opinions

The Statistical Yearbook for the Kingdom of Norway for 1932 gives the following figures for strikes and lock-outs.

Year	Disputes	Workers affected	Working days lost
1922	26	2,168	91,380
1923	57	24,965	796,274
1924	61	63,117	5,152,386
1925	84	13,752	666,650
1926	113	51,487	2,204,365
1927	96	22,456	1,374,089
1929	63	8,042	363,844
1930	73	4,796	196,704
1931	82	59,524	7,585,832

In the course of the development of Norwegian legislation for the settlement of collective labour disputes, the attitude of both workers and employers has undergone a notable change.

Up to the year 1907 the employers opposed every legislative measure for the settlement of labour disputes, but after that they supported the introduction of compulsory conciliation procedure. Although the Employers' Federation has constantly opposed the permanent establishment of compulsory arbitration machinery, it agreed to the various provisional Acts for this purpose, and even quite recently voices have been raised among employers' in favour of such a system.

The trade unions, on the other hand, advocated the introduction of conciliation and arbitration procedure until 1912, but have opposed every attempt to introduce compulsory arbitration since the 1915 Bill, and have consistently maintained this attitude ever since. In general, they are afraid that compulsory arbitration would hamper their efforts to raise their standard of living by depriving them of their most powerful weapon. Yet it is also admitted that the arbitration awards have often been favourable to the workers, particularly on the occasion of the 1920 disputes.

The following lines, written by the former Norwegian Minister of Justice, Johan Castberg, convey an exact impression of the situation created by the attitude of the parties :

Compulsory arbitration in Norway has been achieved in the face of vigorous opposition, sometimes from the workers, sometimes from the employers, and most often from both parties. The institution has thus had to work under extremely difficult conditions. Nevertheless, it has so far stood the test, since the decisions of the arbitration court have always been respected by the parties, and in many instances have created at least temporary peace in the industrial world. For Norway again to have an Act on compulsory arbitration in labour disputes is a mere question of time ¹.

§ 5. — Summary

The Norwegian Act of 5 May 1927, together with the supplementary Act of 8 June 1931, regulates both the procedure for the settlement of justiciable disputes in labour matters and conciliation procedure for the settlement of collective labour disputes (disputes about interests). It prescribes severe penalties for any stoppage of work before conciliation has been attempted with a view to the conclusion of a new agreement. In particular, no stoppage of work may be declared before the expiry of a period of notice, and in no case until four working days have elapsed since the date when the prescribed notification was received by the conciliator. Further, the conciliator may in the public interest forbid *ex officio* any stoppage of work for a specified time while conciliation proceedings are in progress. He has wide powers of compulsion in all matters concerning the investigation of the facts (calling of witnesses, examination of books, etc.).

¹ Johan CASTBERG : " Compulsory Arbitration in Norway ", in *International Labour Review*, Vol. XI, No. 1, Jan. 1925, p. 38.

The Act of 5 May 1927 respecting compulsory arbitration in collective labour disputes expired at the end of the period originally fixed.

Disputes respecting the validity, interpretation, or existence of a collective agreement are settled by the Labour Court. Any attempt to settle such disputes by means of a strike or lock-out is unlawful, and severe penalties are prescribed for contravention of these provisions.

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SWEDEN

§ 1. — Economic Background and Development

The population of Sweden in 1931 was 6,410,000, the total area being 173,156 square miles. It is a country of emigration, the net annual outflow for the last five years having averaged some six to seven thousand.

Down to the middle of the nineteenth century, the country was predominantly agricultural, but the numbers now engaged in production are almost equally divided between agriculture on the one hand, and industry and commerce on the other. Since the war, in particular, Swedish industry has undergone a considerable extension. Its most important branches are those based on timber and iron as raw materials. According to the Sweden Yearbook for 1931, some 1,851,212 workers and 40,000 administrative personnel were engaged in industrial production proper in 1925. Trade and transport occupied about 300,000 persons, about 100,000 were engaged in handicrafts and home industries and about the same number in the building trades. The various factories and industrial undertakings are widely scattered throughout the country.

Both employers and workers in Sweden are exceedingly well organised. The chief employers' organisation is the Swedish Employers' Federation (*Svenska Arbetsgivarföreningen*). In addition, shipowners, agricultural employers and a few other groups, particularly in the handicraft trades, have their own organisations. Collaboration between the general federation and the organisations of shipowners and agricultural employers is secured by an institution called the Council of the Swedish Employers' Associations.

The chief workers' organisation is the Confederation of Trade Unions (*Landsorganisationen*), which in 1930 comprised thirty-seven national unions (mostly of the "industrial union" type) with a total membership of some 530,000. A certain number of trade unions—although of the same type—have for economic or practical reasons not formally associated themselves with the Confederation. During recent years, however, there has been a marked tendency

to further centralisation, which has brought the farmworkers' union, among others, within the framework of the Confederation. With the exception of a few organisations of public employees, the only important union of the "reformist" type which is still outside the Confederation is the Textile Workers' Union, with about 30,000 members (mostly women), but this union, too, is expected to affiliate in the near future.¹

Measures for the prevention and settlement of industrial disputes make their first appearance in Sweden as part of the system of collective agreements built up by the employers' and workers' organisations in the latter half of the nineteenth century. Governmental measures do not appear until the beginning of the twentieth century. The question of legislative measures for conciliation and arbitration was indeed raised in Parliament as early as 1887 and was the subject of proposals by private members in most sessions during the following ten years. No parliamentary action resulted, however, until in 1901 a Royal Commission was appointed to enquire into the question and it was not until 1906 that legislative action was taken, in the form of an Act relating to mediation in industrial disputes. This Act, which made provision for State conciliators, whose task it was to endeavour to prevent and settle disputes in cases where the parties concerned were willing to avail themselves of such services, remained in force until 1920.

Between 1906 and 1920 a number of proposals were put forward with the object of making the legislation concerning industrial disputes more effective and on 28 May 1920 three Acts were promulgated: an Act respecting conciliation in trade disputes, substantially similar to the 1906 Act which it replaced; an Act respecting the Central Arbitration Board for certain trade disputes; and an Act respecting special arbitrators².

The second of these Acts was replaced in 1928 by an Act setting up a special Labour Court for dealing with disputes relating to collective agreements³. This was accompanied by an Act on collective agreements⁴ defining the legal effects of such instruments.

To understand the evolution of measures for conciliation and arbitration in Sweden it is necessary to recognise the distinction

¹ Cf. INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Vol. III, pp. 323 et seq.

² *Legislative Series*, 1920, Swe. 6-8.

³ *Ibid.*, 1928 Swe. 3.

⁴ *Ibid.*, 1928 Swe. 2.

made between "disputes on interests" (i.e. disputes on the substance of new collective agreements) and justiciable disputes or "disputes on rights" (i.e. concerning the meaning and application of a collective agreement). The Conciliation Act of 1906 was chiefly applied to the so-called "disputes on interests". For the settlement of the "disputes on rights" there was for a long time a lack of special authorities. Employers and workers very widely employed the same measures as in "disputes on interests", viz. negotiation and possibly conciliation with the help of the State conciliators. It was also open to them to refer the case to an ordinary court, but they seldom made use of this method, among other things because of the delay involved. A more usual procedure was that of arbitration, the parties to a collective agreement voluntarily undertaking to submit "disputes on rights" to the decision of an arbitration board. It was with a view to promoting such voluntary arbitration that the Act of 1920 setting up a Central Arbitration Board was passed.

With the special legislation on collective agreements adopted in 1928 came the complementary Act setting up a special Labour Court to settle disputes arising out of collective agreements. This relieved the ordinary courts of cases of this kind. At the same time the Central Arbitration Court ceased to act, being no longer needed.

§ 2. — The System in Force

The system as it at present stands, therefore, makes provision for conciliation by the Act respecting conciliation in trade disputes of 28 May 1920; for compulsory proceedings before a special court of disputes concerning the validity, existence and interpretation of collective agreements by the Act concerning the Labour Court of 22 June 1928; and for voluntary arbitration by the Act respecting special arbitrators in trade disputes of 28 May 1920.

CONCILIATION

Conciliation under the Act respecting conciliation in trade disputes of 28 May 1920 takes three forms: it provides for the appointment of a conciliator in each of the seven districts into which the country is divided for the purpose of conciliation; it provides that a conciliator may be appointed to act in some definite sphere of activity other than or in addition to the

district¹; it provides also in special instances, e.g. important disputes affecting more than one district, that special conciliators may be appointed or conciliation commissions may be set up.

The great bulk of the work of conciliation is performed by the district conciliators. These conciliators are appointed by the Government for a calendar year. It is their duty to follow attentively the industrial conditions obtaining in their particular district and to co-operate in adjusting industrial disputes which may arise. Where the dispute in question threatens to lead to a stoppage of work of great importance, the conciliator must take steps to procure adequate information regarding the subject of the dispute; must urge the parties, pending a settlement, not to engage in or extend any stoppage of work; and must summon the disputants to meet together for the purpose of discussion and negotiation. The negotiations arranged by the conciliators between parties to a dispute aim primarily at bringing about an agreement on the basis of proposals made by the disputants themselves, but the conciliator may also make suitable proposals if such a course is judged advisable. If it is found impossible to reach an agreement by means of negotiations, the conciliators may propose the submission of the dispute to arbitration, but may not himself act as arbitrator; although, if such a course seems desirable, he may offer his assistance in the selection of a suitable person.

The system thus briefly outlined is in no sense compulsory, but on the other hand is not completely optional. It is laid down in section 4 of the Act that "the parties to the dispute shall be bound to respond to the conciliator's summons". According to the amending Act of 12 June 1931², the obligation of the parties summoned to appear exists, not only when, as at present, the dispute is followed or is likely to be followed by a stoppage of work of great importance, but also when the summons is demanded by one of the parties. If the demand is made by a workers' federation it is only valid when the federation in question is representative of at least half of the workers involved in the dispute. There is no penalty provided for failure to comply. The disputants moreover are under no obligation either to accept the proposals by the conciliator or to submit their differences to arbitration.

The official conciliators are given considerable powers, it being incumbent upon the parties, at the request of the conciliator, to furnish him with extracts from accounts and other

¹ The possibility envisaged here of appointing a permanent conciliator for all conflicts within a certain industry has so far never been resorted to.

² *Legislative Series*, 1931, Swe. 4.

documents, together with statistical data and other facts with which the dispute is concerned, as also to grant him access to workplaces, in so far as this is necessary in order to afford him a sufficient basis for coming to a decision. It is laid down that any information so obtained must be treated as confidential, if the parties furnishing it so desire.

Conciliators are paid out of public funds, and may not accept any remuneration from employers or workers for their assistance in adjusting industrial disputes, or for any other reason. They are under the supervision of the Social Board and present a yearly report to the Board on their work and on the progress of the disputes dealt with. The Social Board has instituted a special secretariat (the Conciliation Office) where statistical information regarding collective agreements and labour disputes is collected and placed at the disposal of the conciliators. Annual reports, together with a short statistical survey of the work of the conciliators, are available from the year 1907.

ADJUDICATION OF JUSTICIABLE DISPUTES AND ARBITRATION

As already noted, an important distinction is made between justiciable disputes or "disputes on rights", i.e. disputes concerning the validity, existence or interpretation of a collective agreement, and disputes concerning the setting up of new conditions, referred to as "disputes on interests". The Act concerning the Labour Court of 22 June 1928 deals with the adjudication of the so-called "disputes on rights".

Under the provisions of this Act a Labour Court was set up having its permanent seat in Stockholm but capable of holding sessions elsewhere. The members of this Court consist of three impartial members and four other members representative of employers and workers. The three impartial members, comprising a president and two associates, are appointed by the King, it being laid down that the president and one of the associate members must have legal knowledge and experience. The four other members are appointed by the King for a period of two years, the central employers' and workers' organisations providing two each. These members are selected from lists submitted by the organisations in question, which must contain at least twice as many names as the appointments to be made. Substitute members are also chosen both for the impartial members and for those proposed by employers and workers.

The Court is given power to call witnesses and make the necessary investigations, and has the power to inflict fines. The details of procedure are designed to make it possible to arrive at decisions with the minimum of delay, preferably in a single sitting, and it is stipulated that the report made on the case shall be as brief as possible. These decisions are legally enforceable. By the 1928 Act on collective agreements, it was laid down that no militant action (i.e. strike or lock-out) may be taken, during the life of an agreement, in connection with "disputes on rights".

The Act of 28 May 1920 respecting special arbitrators in trade disputes makes provision for arbitration machinery to be set up in the event of both parties to a dispute wishing to avail themselves of it. The persons thus appointed as arbitrators may serve either as single arbitrators or as chairmen of arbitration boards constituted by the parties. Such special arbitrators may be called upon to act as chairmen on arbitration boards either of a permanent character or constituted for a particular case. They are appointed for a period not exceeding two years at a time, and, like the conciliators, have to report every year to the Social Board on their activity.

§ 3. — Results and Opinions

The following table shows the number of stoppages of work, workers directly involved and working days lost through industrial disputes in Sweden during the years 1903-1930.

Returns giving the causes of strikes and lock-outs show that, as usual, wage disputes are responsible for the great majority of such stoppages. Over the period 1918-1927 73.9 per cent. of the strikes and lock-outs were due in the main to questions of wages. During 1928 this percentage shrank somewhat, to 63.2 per cent. ; in 1929 it was 66.1 per cent.

Turning to the results of stoppages of work, it is worthy of note that whereas over the period 1918-1927 the percentage settled in favour of workers was approximately the same as the percentage settled in favour of employers (21 per cent. of the total number in one case, 21.8 per cent. in the other), only 5 per cent. of the number of workers engaged in stoppages of work were successful in enforcing their demands, while 16.6 per cent. were compelled to accede to the employers' demands. Over the whole ten-year period 77 per cent. of the workers returned to work as the result of a compromise. During 1928 this percentage increased still

**NUMBER OF STRIKES AND LOCK-OUTS, WORKERS DIRECTLY INVOLVED
AND WORKING DAYS LOST**

Year	Number of strikes and lock-outs	Number of workers directly involved	Number of working days lost
1903	142	24,571	642,000
1904	215	12,248	386,000
1905	189	32,906	2,390,000
1906	290	18,655	479,000
1907	312	23,540	514,000
1908	302	40,357	1,842,200
1909	138	301,749	11,800,000
1910	76	3,671	39,000
1911	98	20,576	570,000
1912	116	9,980	292,000
1913	119	9,591	303,000
1914	115	14,385	621,000
1915	80	5,119	83,000
1916	227	20,711	475,000
1917	475	46,701	1,109,000
1918	708	61,223	1,436,000
1919	440	81,041	2,296,000
1920	486	139,039	8,943,000
1921	347	49,712	2,663,000
1922	392	75,679	2,675,000
1923	206	102,896	6,907,000
1924	261	23,976	1,205,000
1925	239	145,778	2,560,000
1926	206	52,891	1,711,000
1927	189	9,477	400,000
1928	201	71,461	4,835,000
1929	180	12,676	667,000
1930	261	20,751	1,021,000

further to 89.4 per cent. In 1929, the proportion was 77.1 per cent.

The details given in the two following tables (taken from the annual reports of the work of the official conciliators for the years 1924-1930) give some idea of the degree of success achieved by this method of dealing with industrial disputes in Sweden :

Year	Number of cases actually dealt with by conciliators and conciliation committees	Number of workers affected	Number of cases in which settlement reached through conciliation
1924	205	187,829	171
1925	220	233,177	183
1926	200	52,891	170
1927	147	63,919	117
1928	160	89,838	140
1929	151	48,005	122
1930	215	23,453	177

Year	Number of cases of conciliation in which stoppage of work occurred	Number of cases of conciliation in which work ceased before intervention	Number of cases of conciliation in which work ceased after intervention	Percentage of total stoppages of work in which conciliation intervened	Percentage of total number of workers affected by stoppages of work, in which conciliation intervened
				Per cent.	Per cent.
1924	118	105	13	47	70
1925	102	78	24	39	92
1926	98	89	9	45	89
1927	89	76	13	43	52
1928	83	71	12	36	86
1929	66	53	13	37	74
1930	88	71	17	30	60

As will be seen, some 150 to 200 cases were dealt with every year affecting, on an average, about 100,000 workers. In over 80 per cent. of the cases settlements were reached. In about half the disputes dealt with by the official conciliators a stoppage of work occurred, but only in about one out of every seven of the cases did the stoppage begin after the intervention took place. Altogether, between one-half and one-third of the total number of strikes and lock-outs that occurred were made the subject of intervention, but these covered fully 75 per cent. of the workers affected.

In fine, the conciliation service would appear to play a large part in the technique of industrial relations in Sweden, both in preventing strikes and lock-outs and in settling stoppages of work once they have occurred ; and, so far as can be judged, the methods followed would appear to have achieved a large measure of success.

Opinions as to the system of conciliation and arbitration in Sweden — apart from political utterances made at the time when some specific measure is under consideration — are on the whole rare ; the essential reason being, it would seem, that both employers and workers are in the main satisfied with the methods used. The general principle that stoppages of work should not take place over the interpretation of a collective agreement is accepted by both parties, although the passing of the present Act met with strong opposition in various quarters. Compulsory arbitration of disputes in general, on the contrary, finds little favour with either side, although various attempts have been made to extend the principle of compulsory arbitration to " disputes on interests " when it is a question of what are termed " disputes dangerous to society " (including disputes in agriculture). For

such disputes certain changes in the Conciliation Act have also been contemplated — though so far not adopted — viz. the introduction of a certain period of notice before a stoppage could take place, as also, the establishment of a special institution, a so-called “ Board of Opinion ”, which, after a thorough study of the conditions, would publish a report on the case, in order to make it possible for public opinion to exercise an appropriate influence upon the parties. All things considered, it may be said that the conciliation system, as it at present exists, while not immune from criticism, meets on the whole with the appreciation of employers and workers alike.

§ 4. — Summary

The system of conciliation and arbitration in Sweden is governmental, based upon the effective organisation of both employers and workers, who have built up a highly developed system of collective agreements.

Conciliation is carried out almost exclusively by official conciliators having power to convoke the parties and to obtain necessary information, but otherwise acting solely as mediators. In the event of the failure of the conciliation proceedings, provision is made for arbitration, but only on the consent of both parties.

“ Disputes on rights ” concerning the validity, existence or interpretation of a collective agreement are dealt with by a special Labour Court. The decisions of this Court are legally enforceable.

The system of conciliation and arbitration in Sweden would appear to have achieved a considerable measure of success both in the prevention and in the settlement of stoppages of work, and on the whole would seem to enjoy the confidence of both parties.

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FINLAND

§ 1. — Economic Background and Development.¹

Finland has an area of 388,217 square kilometres. Over one tenth of its territory consists of lakes, and 73.5 per cent. is covered by forests. At the end of 1929 the country had a population of 3,623,000. A relatively small proportion of the population is employed in industrial undertakings (169,729 persons in 1928). The agricultural population constitutes 82.6 per cent. of the total.

Finland ranks with Canada and Sweden as one of the world's chief timber-exporting countries. The wood industry, including the manufacture of substances derived from wood, accounts for 86 per cent. of the exports, compared with only 11 per cent. derived from agriculture and 3 per cent. from other industries. It is the principal industry of the country. There are also blast furnaces and some textile undertakings.

In 1907, the trade unions joined to form a Confederation of Trade Unions (*Suomen Ammattijärjestö*) which in 1928 had a membership of 90,231. This organisation, which, under Communist influence, gradually lost its trade union character, was suspended by the Government and it was dissolved in October 1930. A new central organisation has been formed by the non-Communist workers, under the name of *Ammattillisten Järjestöjen Keskusliitto* — *Finlands Fackföreningars Centralförbund*.

The employers' organisations are affiliated to the Central Federation of Employers of Finland (*Suomen Työnantajain Keskusliitto* — *Arbetsgivarnas i Finland Central-Förbund*). This organisation took the place of the General Federation of Finnish Employers, founded in 1907. It has been in existence since 1 January 1918 and consists of the members of general and local industrial associations and private persons. In 1928 it had 505 members, who employed 95,457 workers.

¹ Cf. *Freedom of Association*, Vol. III, pp. 353 et seq.

The earliest special provision on conciliation in labour disputes was that in section 26 of the Industrial Act of 1879. Under this Act the task of trying to settle labour disputes was entrusted to the boards of directors of the chambers of industry set up in the different towns of the country. This provision was never of any practical value.

The Regulations issued to factory inspectors in 1889 also contained a provision relating to conciliation in labour disputes. This instructed the inspectors to undertake the settlement of labour disputes in their respective districts. Later, public opinion inclined to the view that the factory inspectors were not the proper persons for this task, and the provision in question was omitted in the new Order on factory inspection issued in 1917.

At the beginning of the present century Parliament on several occasions considered proposals for a system of chambers of labour or joint labour committees, whose functions would include the settlement of labour disputes. Side by side with the local committees it was proposed to set up a Central Council.

In 1913 Parliament passed a special Act on chambers of labour, which provided for chambers consisting of equal numbers of employers and workers. The war prevented the Government from enforcing the Act, and when in 1919 a definite decision was called for, it was decided not to promulgate the Act on account of the change in conditions. It was considered that, especially in the matter of conciliation in labour disputes, the proposed machinery of trade councils would be too costly and cumbersome; it was also feared that the chambers of labour would have too many different duties.

In 1918, however, the Government set up a Committee to draft proposals for the legal regulation of the relations between employers and workers. In 1919 it brought in a new Bill on labour disputes, providing for the appointment of industrial conciliators in all districts. Recourse to joint committees was to be had only in special cases. The Bill instituted sanctions with a view to making conciliation in labour disputes more effective, and provided for compulsory arbitration in cases where conciliation had proved fruitless and a stoppage of work would endanger the public interest. This Bill was rejected in Parliament, by both employers' and workers' representatives. Later, the question was again examined by the Legislative Committee responsible for drafting new Bills. This Committee brought forward a proposal omitting nearly all the repressive clauses.

An Act embodying these proposals was passed in 1924 and promulgated in 1925. This is the Act of 21 March 1925 respecting conciliation in collective labour disputes, which came into force on 1 January 1926.¹

§ 2. — The System in Force

CONCILIATION

Finnish legislation on conciliation is contained, as stated above, in the Act of 21 March 1925 on conciliation in collective labour disputes, which provides that the requisite number of conciliators shall be appointed by Decree to intervene in collective labour disputes between employers and workers. The Decree of 21 December 1925² fixes the number of Conciliators at four, and defines their sphere of jurisdiction.

Each conciliator exercises his functions independent of the others, under the supervision of the Minister of Social Affairs. The conciliators are appointed by the Council of State for not more than three years at a time.

If a difference of opinion arises between the conciliators respecting the question which conciliator is competent to intervene in a collective labour dispute, the Minister of Social Affairs decides. Every conciliator is competent to intervene in a dispute if the parties agree thereto or, without reference to the competence of the conciliator, if the negotiations are begun under his guidance.

If a dispute falls within the sphere of jurisdiction of two or more conciliators, each of them at once notifies the Minister of Social Affairs, who appoints one of the ordinary conciliators to intervene in the dispute, unless he considers it desirable to appoint a special conciliator. The same dispute cannot, therefore, be within the competence of more than one conciliator.

The Minister of Social Affairs may also appoint a special conciliator, or two or more persons acting as a special conciliation Board, to intervene in a dispute if he considers that the dispute, owing to its nature or extent, may endanger any public interests, or if the intervention of the conciliator concerned has been without result. The provisions respecting conciliators apply also with respect to the chairman and members of such Board.

¹ *Legislative Series*, 1925, Fin. 1.

² *Suomen Asetuskokoulma*, 1925, No. 376, p. 1304.

A conciliator is liable to challenge under the same conditions as an ordinary magistrate. If he refrains from intervening in a dispute for a valid reason or owing to challenge, the Minister of Social Affairs appoints another conciliator.

Conciliation proceedings are opened at the request of one of the parties to the dispute or, where the persons concerned in the dispute belong to a trade organisation, at the request of that organisation or of the federation to which it belongs. If, however, the nature and extent of the dispute are such that the stoppage of work caused by it may endanger any public interest to a considerable extent, the conciliator has power to take steps on his own initiative to bring about conciliation. In other cases he does not intervene officially in the dispute unless he is requested to do so by the parties, and not against their unanimous wish.

In principle, a conciliator does not intervene if an agreement has been concluded for the establishment of special conciliation or arbitration machinery, unless all the parties to the dispute request him to do so, or if the special body has dealt with the matter without result or is prevented by circumstances from carrying out its duties.

The conciliation proceedings are conducted in the presence of the representatives of the workers and the employers, invested with full powers. An employer who is a party to a dispute may be summoned to appear in person. If the parties to a collective labour dispute belong to a trade organisation, the conciliator may enter into communication with the said organisation or its superior organisation and may permit it to take part in the negotiations.

The parties are urged to produce and supply all information which can be procured without special difficulty and which is necessary to elucidate the question at issue.

The conciliator may summon experts or other persons for the purpose of elucidating the question at issue or giving advice. The Act, however, does not lay down any means of compelling such persons to attend.

In the course of the negotiations the conciliator endeavours to induce the parties to state definitely the points at issue and restrict them as far as possible, and to arrive at a settlement in terms as near as possible to the basis of their own proposals. For this purpose he proposes such concessions and adjustments as seem to be equitable.

If conciliation proceedings have been held and the conciliator

has failed to settle the dispute by negotiation, he may submit to the parties a final conciliation proposal in writing, and at the same time urge them to ratify the said proposal within a short time limit fixed by himself. If a settlement is reached, a written agreement embodying it is drawn up and signed by the parties.

If the parties fail to reach an agreement, the conciliator has no power to compel them to do so. But the report on the conciliation proceedings and the conciliation proposal, if any, may be published by the conciliator, provided that this is not against the unanimous wish of the parties.

ARBITRATION

If the parties fail to reach a settlement by conciliation, the Act provides for possible arbitration; it requires the conciliator to urge the parties to submit the dispute for decision to one or more arbitrators, whose award they pledge themselves to observe. The conciliator himself does not act as arbitrator.

If the parties agree to submit the dispute to an Arbitration Board for decision, a written agreement is drawn up to this effect in the prescribed form and steps are at once taken to appoint arbitrators.

In this connection the conciliator gives the parties all necessary assistance, *inter alia* by deciding questions referred to him respecting the choice of the arbitrators, and by supplying the arbitrators appointed with a report of the dispute and the conciliation proceedings.

The Act finally provides that if the parties fail to reach an agreement and the dispute is not settled by arbitration, the conciliator must at once notify the Minister of Social Affairs, and must append to his notification a report of the dispute and the conciliation proceedings.

The conciliator does not again intervene in the same collective dispute, except at the joint request of the parties, or when an alteration occurs in the dispute itself or in circumstances materially affecting the settlement. Such renewed conciliation proceedings are conducted in the same manner as the earlier proceedings.

The Act imposes no penalties on the parties to a dispute. On the other hand, it provides that if a conciliator unlawfully discloses trade or business secrets which have come to his knowledge in the course of his official duties, he is liable to a fine. If he has done so with intent to procure economic advantage for

himself or another, or to injure a person engaged in industry or business, he is liable to imprisonment. The same penalty is imposed on a person who with such intention for himself or another has procured information respecting trade or business secrets. Prosecutions for the above-mentioned contraventions are not, however, instituted by the Public Prosecutor unless the injured party reports the contravention for prosecution.

§ 3. - Results, Opinions of the Parties Concerned and Plans for Reform

The following table shows the number of labour disputes and the manner in which they were settled, according to the Finnish Statistical Yearbook ¹.

Year	Number of disputes	Number of days over which the disputes extended	Number of employers affected by the disputes	Number of workers affected by the disputes	Outcome of the disputes			No agreement, indefinite or outcome unknown
					Agreement	Acceptance of the employers' conditions	Acceptance of the workers' conditions	
1910. .	54	1,206	183	4,361	14	31	9	—
1920. .	146	3,201	824	21,001	76	41	25	4
1925. .	38	1,069	156	2,921	19	8	9	2
1926. .	72	3,227	310	10,230	40	13	14	5
1927. .	79	4,252	221	13,368	33	30	14	2
1928. .	71	4,595	309	27,226	25	18	24	4
1929. .	26	889	138	2,443	11	12	3	—
1930. .		212	32	1,673	5	4	2	—

In Finland the possibility of some form of compulsory conciliation has been under consideration. There is a consensus of opinion that the Act of 1925 instituting a system of voluntary conciliation has failed to achieve its purpose.

But the employers, when approached in the matter, have declared against any such extension of the conciliation system, while the Finnish Confederation of Trade Unions, split between the Communists and the Social-Democrats, has refused to enter into discussion, maintaining that the right to strike must in no way be limited. A Committee has been appointed to examine ways and means of making the present Act more effective ². In

¹ *Statistisk Årsbok för Finland*, 1931, pp. 270-271.

² *Socialinen Aikakauskirja* — *Social Tidsskrift*, 1929, Nos. 2 and 5.

March 1931 this Committee drafted a Bill to amend the Act in force, providing for the postponement of open conflicts by imposing upon the parties concerned the obligation of notifying the conciliator of proposed stoppages of work. The fate of this measure remains to be seen ¹.

§ 4. — Summary

Under the terms of the Finnish Conciliation Act, a conciliator or the Conciliation Board may not intervene in a dispute, except at the request of one of the parties, unless the question at issue is a serious collective dispute endangering the public interest.

Like similar enactments in other countries, the new Finnish Act gives the preference to conciliation machinery set up by agreement between the parties to the dispute. In order to strengthen the authority of the conciliator, the Act lays down that in case of failure the conciliator may not take steps with a view to renewed intervention, except at the joint request of the two parties, or if the nature of the dispute has been changed through the emergence of new facts.

The Act has a voluntary character and makes no provision for penalties, except in the case of a conciliator who discloses trade secrets.

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¹ Cf. the article of Niilo A. MANNIO in *Sosialinen Aikakauskirja* — *Social Tidskrift*, 1931, No. 4.

UNION OF SOCIALIST SOVIET REPUBLICS

§ 1. — Historical Survey

BEFORE THE REVOLUTION

Until the War

Early in the nineteenth century (about 1825-1830), when Russian industry was still young, it began to feel the first effects of competition and the difficulties in the relations between employers and workers. On the employers' side complaints became more and more numerous, especially concerning the sudden leaving of the workers *en masse* on the pretext that they were recalled by their lords¹. On the workers' side there was no less complaining; they objected to the unsatisfactory conditions in which the manufacturers compelled them to live, in tenements attached to the undertakings, to the irregularity in the payment of their wages, etc. The lack of contracts of engagement and regulations defining the relations between workers and employers was felt throughout industry.

The first Act intended to regularise the situation of the workers' relations with employers was promulgated at the request of the manufacturers in 1835. It made it compulsory to conclude a contract of engagement or issue to the worker an account book (worker's cards), and forbade the worker to leave his job before the termination of the contract or the period for which he had been engaged. The Act also prescribed that certain steps should be taken to improve the conditions in the workers' tenements, for which it laid down regulations. On the other hand, it made no provision for conciliation proceedings in disputes in industrial undertakings.

¹ At that time, and until 1861, serfdom prevailed in Russia, and the landowners had the right to recall the peasants who were attached to their land and to whom they had granted temporary permission to take up industrial work.

After the abolition of serfdom in 1861, all the persons concerned became clearly aware of the need of regulating the status of the workers and avoiding industrial disputes, for political as well as for economic reasons. But the different views of the various ministries and the diversity of industrial interests in the different regions of Russia considerably delayed the adoption of any measure in this field. It was not until 1896 that an Act was passed instructing the factory inspectors to act as conciliators between employers and workers.

Industrial Disputes and Labour Inspection

A staff of inspectors had been formed in 1882 for the purpose of supervising the observance of the Act of 1845 prohibiting the employment in industry of children of under twelve years of age. The inspectors were subordinate to the Ministry of Finance (Department of Industry)¹. Later, they were instructed to supervise the conditions of health and safety in the undertakings and to see to it that labour laws were observed by employers and workers. When the Government decided to organise a system of conciliation between employers and workers it made use of the factory inspectors, whose knowledge of the conditions of employment in industry appeared to make them the most suitable for the purpose.

The Act of 3 June 1886 concerning "the supervision of the factories and the relations between manufacturers and workers" was due to the initiative of the Minister for the Interior, who considered that it was absolutely necessary to take steps to limit and conciliate industrial disputes, which were tending more and more to become political in nature. The Minister urged in support of his Bill that "the enquiries made by the local authorities into the cost of recent strikes have shown . . . that these disputes were for the most part due to the absence in Russian legislation of provisions dealing with the relations between manufacturers and workers"².

The Act provided that the inspectors should visit any undertaking where there was a prospect of a dispute, and for this purpose the police were ordered to notify the inspectors at once. The inspectors were to ask the claimant party, whether employers or workers, for a written or oral explanation of their dissatisfaction.

¹ Subsequently the Ministry of Commerce and Industry.

² Letter of the Minister of the Interior to the Minister of Finance, 4 Feb. 1885 (N. 281). Cf. M. TOUGAN-BARANOWSKY: *The Russian Factory of Yesterday and To-day*, p. 562; St. Petersburg, 1900.

They were to make an enquiry on the spot and try to conciliate the parties, although their decisions had not the force of law.

During the first years of their activity the inspectors acquired a certain measure of popularity among the workers, and they succeeded in making their authority felt in many disputes and in conciliating the parties.

But the scope of this Act was substantially restricted by the circulars subsequently issued by the Ministry of Finance. Thus, a circular of 1897¹, which was contrary to the spirit and letter of the Act of 1886 and was the result of complaints made by manufacturers, forbade the inspectors to question workers on strike until they had resumed work. Furthermore, the workers were allowed to make their complaints only in public.

The Act of 1886 provided that every worker considered as a "strike leader" rendered himself liable to four to eight months' imprisonment, and other active strikers to two to four months' imprisonment. If a strike involved violence or threats to the person or the destruction of the property of the undertaking, the penalty for strike leaders could be increased to sixteen months and for other active strikers to eight months. This measure restricted the freedom of the workers to lay their complaints openly before the factory inspectors.

An instruction issued to the factory inspectors in 1898² restricted the conciliatory functions of the inspectors still more. Thenceforward the inspectors were to intervene only if the dispute arose out of the interpretation or application of an individual contract of employment³. In other words, they could no longer consider disputes concerning questions of interests or questions of safety or hygiene, or disputes arising between the date of engagement and the issue of the work card, when the contract of employment officially came into force. Finally, in 1903, a new Act placed the factory inspectors immediately under the provincial governors.

In spite of all this, the factory inspectors often succeeded in conciliating the parties, and in many cases brought about a settlement in favour of the workers. The reason for this lay in the moral authority they enjoyed in the eyes of the workers and manufacturers, and in the skill with which they enforced the

¹ Circular of the Department of Industry in the Ministry of Finance (N. 9677), 8 April 1897. Cf. A. MIKOLIN: *Factory Inspection in Russia*, p. 224; Kiev, 1906.

² Instruction to the factory inspectors issued in Sept. 1898. Cf. A. MIKOLIN, *op. cit.*

³ There were no collective agreements in Russia at that time.

existing legislation, if need be circumventing or ignoring certain provisions intended to restrict the field of their activities.

Workers' Representation

Another measure intended to prevent labour disputes was the creation of posts of workers' representatives (*starosta*) in industrial undertakings¹. The workers in each department of an undertaking could elect a representative to defend their interests with respect to the application and interpretation of contracts of employment.

But the selection of these representatives had to be approved by the managers of the undertaking. This made the workers mistrustful, and they often refused to elect representatives in whom the employers had confidence. The 1903 Act was thus applied only in a very small number of undertakings, principally in State industries.

During the War (until February 1917)

The need of finding some method for the prompt settlement of disputes by way of negotiation was felt more and more strongly during the war. The war industries committees² decided that workers' delegates should participate in their work, and in most of these committees, as well as in the Central Committee, so-called "workers' groups" were formed. They consisted of delegates from the meetings of workers' representatives in industrial undertakings, these representatives themselves having been elected for the purpose by general meetings of the workers in the undertaking. The power thus given to the workers to elect representatives on the war industries committees gave fresh life to the 1903 Act on the *starosta*, which became more widely applied during the war.

The workers' groups, whose duty it was to defend the interests of the workers and ensure that they would collaborate in the work of national defence, had also to deal with disputes arising in the important munitions and related industries. This they did at first only occasionally, but later more regularly. Several disputes were settled by negotiation between the workers' groups and the employers' representatives, and chiefly by the

¹ Act of 10 June 1903. Cf. *Code of Laws of the Russian Empire*, 1913 edition.

² These committees consisted of representatives of manufacturers, traders, local authorities, "zemstvos" (autonomous rural councils), and municipalities.

intervention of the workers' group in the Central War Industries Committee.

When this Committee decided to set up conciliation boards, the workers' groups took an active part in forming these boards. The rules for the Central Conciliation Board (attached to the Central War Industries Committee) were approved in February 1916 by the Second Congress of War Industries Committees. These rules were also to serve as a model for the foundation of local conciliation boards which the Central War Industries Committee proposed should be set up.

The Central Conciliation Board consisted of eight employers' representatives, selected by the Association of Manufacturers for the Petrograd area, and eight workers' representatives, selected by the workers' groups of the Central War Industries Committee and the Petrograd War Industries Committee. Each party was to elect in addition two substitute delegates. The chairman was elected by a simple majority of votes from among the members of the Board, but failing agreement, he could be chosen elsewhere, in which case he had only a consultative vote. The Conciliation Board could not deal with a dispute until it had been referred to it by the parties. Once this had been done, the Board referred the question to a committee of four of its members, two workers' and two employers' representatives, which had to be set up within twenty-four hours. This committee acted as an intermediary and proposed a compromise to the parties to the dispute. If it was accepted, the committee immediately informed the Conciliation Board, which then took a decision in accordance with the agreement reached. If the committee failed, it informed a plenary session of the Conciliation Board. The Board then drew up a new proposal, which it submitted to the parties. If the latter accepted this proposal, the Board took a final decision by a majority of votes. If the voting was equal, the Board could take no decision, and in that case it had to propose to the parties to organise an arbitration court.

The necessary funds for the working of the conciliation boards were allocated by the war industries committees to which these boards were attached.

Owing to the opposition that this scheme met with among both workers and employers, it could not be applied in practice to any great extent. Nevertheless, besides the Central Conciliation Board in Petrograd, conciliation boards were set up in certain important industrial centres.

AFTER THE REVOLUTION

*Under the Provisional Government
(March to October 1917)*

The political and economic changes that accompanied the Revolution of March 1917 led to a very large number of disputes in all branches of industry, which made it necessary for both the Government and the parties concerned to try to find means of settling them by amicable agreement. Legislation failed to keep up with events ; the private initiative of the workers' and employers' organisations, being encouraged by the Government and stimulated by the conditions of the labour market and the political situation, was particularly active in the field of conciliation and arbitration.

Government Measures

Workers' committees were set up in nearly all undertakings when the Revolution broke out, in the form of councils of workers' representatives (*starosta*). By an Act of 22 April 1917 the Provisional Government approved the creation of these committees. This Act provided that workers' committees could be set up in all private and Government undertakings, either at the request of not less than one-tenth of the workers or at that of the management. It was the duty of the workers' committees : (a) to represent the workers in all discussions with the management concerning wages, hours and discipline ; (b) to regulate the mutual relations between the workers ; (c) to represent the workers in their relations with Government or public institutions ; (d) to organise and develop institutions for improving the moral and material welfare of the workers ; (e) to convene plenary meetings of the workers.

From the outset these committees acquired great importance as authorities of first instance in disputes. They became responsible for taking the effective decisions in strikes and disputes in general. They also took an active part in the formation of conciliation boards.

But the Act on conciliation boards promulgated shortly before the fall of the Provisional Government was not applied. As a matter of fact, it merely confirmed the situation established in practice, with this difference that when a dispute broke out, the parties were to refer the case directly to a conciliation board by common agreement, without acting through the factory inspectors.

Apart from these legislative measures, reference should be made

to the activities of the Ministry of Labour, which in all cases of serious dispute sent a representative to the spot, whose duty it was to bring his influence to bear on employers and workers with a view to making them refer the dispute to a conciliation board, or if the dispute threatened national interests, to the " Department for Industrial Relations " in the Ministry of Labour. This Department also acted as an optional authority of higher instance when the conciliation boards failed in their negotiations. But it often happened that the Department was unable to decide on the merits of the case referred to it by the parties.

Private Initiative

From the beginning of the Revolution private initiative led to action in the matter of industrial disputes. The first attempt of this kind was the agreement concluded between the Association of Manufacturers in the Petrograd area and the local soviet of workers' delegates. This agreement provided that every dispute was to be submitted to the conciliation board of the undertaking, which was to consist of an equal number of representatives of the two parties. If the board failed to settle the dispute, it was to be referred to the Central Conciliation Board for the Petrograd area, consisting of an equal number of representatives of the Association of Manufacturers and the (Council) Soviet of Workers' Delegates.

Similar conciliation boards were set up on the initiative of workers or manufacturers throughout the country, and soon acquired great importance.

With the increasing development of the trade unions and the growth of their economic and political influence, special conciliation sections were opened in the unions, and as they developed, more and more disputes were referred to them instead of to the conciliation boards.

This was the situation at the time of the Bolshevik Revolution.

Under the System of " War Communism " *(1918-1921)*

Under the system of " war Communism ", that is to say, from the Bolshevik Revolution in November 1917 until 1921, when the " New Economic Policy " (partial freedom of trade and management of State undertakings on commercial principles) was introduced, the situation changed completely, the question being regarded from an altogether different aspect.

In theory, there could be no industrial disputes, since the

undertakings were nationalised and the free engagement of workers had been replaced by compulsory labour. The State fixed wage rates and conditions of employment by way of Decree. When the State officials managing an undertaking infringed these conditions there was no question of a dispute, but of a contravention of labour laws leading to administrative proceedings. Workers who contravened the Labour Code or the Decrees of the Soviet authorities were punished by disciplinary penalties pronounced by the disciplinary courts of their respective unions.

It was soon found, however, that frequent disputes were produced by the difficulty of applying the Communist policy and by the diversity in the conditions of employment in the different undertakings. To settle these, the trade unions organised conciliation committees as early as 1918, quite apart from legislative action, and these committees became of considerable importance.

As a matter of fact, during the period of war Communism, the trade unions through their conciliation committees were the only bodies that dealt with disputes between management and workers. The committees based their activities on the principle that there could be no divergence of interest in an undertaking between the workers representing the management and those representing labour, since both belonged to the working classes, the interests of which were defended by the trade union. Consequently, cases brought before the union were not disputes between employers and workers, but simply required a pronouncement on the application of legislation.

The work of the conciliation committees was thus entirely one-sided. The committee, which consisted of delegates of the organised workers, explained or interpreted any given legislative provision after hearing the respective statements of the management and the workers. But the explanation given by the committee by no means always satisfied both parties. When it was impossible to reach an agreement between employers and workers, the trade union applied to the local section of the Commissariat of Labour for an interpretation, the decision of this body being considered final and irrevocable.

Owing to the increase in these applications for interpretation, the local labour departments decided to organise their own disputes committees, which acted as higher authorities for the settlement of disputes between management and workers.

§ 2. — The Present Policy

BASES OF THIS POLICY

After the introduction of the New Economic Policy, which restored freedom in the engagement of workers by the conclusion of individual or collective employment contracts, authorised the creation of private undertakings or their concession to foreign concerns, and reorganised the management of national undertakings on commercial principles, it became quite clear that labour disputes could not be avoided.

The question was first discussed at the eleventh congress of the Russian Communist Party (March 1922), which came to the conclusion that during the period of transition from capitalism to socialism, there would continue to be different classes, "and as long as classes continue to exist, the class war remains inevitable" ¹.

It was the question of the right to strike that gave the Communist party and the trade unions most cause for concern. Although it was desirable for political and economic reasons to make it practically impossible to declare a strike, it was difficult to prohibit this; for, once the strike was authorised in principle for private undertakings (and this point of view was generally accepted), how were the workers to be prevented from resorting to it in State undertakings? After prolonged discussion the Communist Congress decided that the right to strike should not be abolished, but that strikes, being "harmful to the general interests of the country and the working class", should be regarded only as a last resort to be employed in extreme cases. The resolution adopted by the eleventh Congress contained the following passage:

The final object of a strike under the capitalist system is the destruction of Government authority and the annihilation of the class in power. In a proletarian State in the transitional stage such as ours, on the contrary, the activities of the proletariat should aim only at consolidating the proletarian State and the class Government of the proletariat by fighting bureaucracy, the faults and weaknesses of that Government, the class appetites of any capitalists who have evaded State supervision, etc.

For this reason, when there is friction and dispute between groups of workers and the institutions of the workers' State, it is for the trade unions to help to put an end to disputes as soon and as efficiently as

¹ *Record of the Eleventh Congress of the Russian Communist Party. Moscow, 1922.*

possible by trying to obtain for the workers they represent whatever advantages may be compatible with the development of the proletarian State and its economy, without injury to other groups of workers.

The resolution explains that the only "just and rational" means of settling a dispute lie in the intervention of the trade unions, which must act with the greatest possible rapidity to terminate the dispute. If for some reason or other a strike cannot be avoided, it is to be considered lawful only if approved by the union, and must be settled as soon as possible. In a general way, it is the duty of unions to prevent disputes whenever possible by watching over the observance of labour legislation and collective agreements. They must also make the workers understand that strikes injure the Soviet State as a whole and the working class in particular ¹.

The need of creating a suitable system of conciliation and arbitration institutions was generally admitted in the trade unions. But questions of principle — e.g. should conciliation and arbitration be compulsory ; should the conciliation authorities be constituted on the joint principle ? — gave rise to much discussion in the trade union press and at the Fifth Trade Union Congress in September 1922.

Certain trade union leaders considered that the unions should surrender their exclusive right to regulate conditions of work and wages, which they held under the system of communism, and that therefore they could no longer be responsible alone for the conciliation of disputes. Other trade unionists held that the unions should retain the one-sided right to regulate conditions of work and put an end to disputes, so as to uphold their status as against the employers and counteract the development of capitalism. The supporters of this view were prepared to accept the introduction of the joint principle in the disputes bodies formed for the separate undertakings, but they maintained that disputes which could not be settled by these bodies should be dealt with by the unions alone. At first this view prevailed, and only the conciliation bodies in the undertakings were constituted on the joint principle. These were the "committees for the determination of wages and the settlement of disputes", usually known as "joint committees", as they consisted of an equal

¹ It may be added that Soviet legislation does not expressly prohibit strikes, but according to a Soviet writer, "in our State industry there can be no recourse to the lock-out, for a proletarian State cannot use this method of bringing pressure to bear on the workers". (P. AVDEYEV : *Labour Disputes in the U. S. S. R.* Moscow, 1928. 67 pp.)

number of representatives of the workers (selected by the workers' committee of the undertaking) and the management¹.

With the growing use of collective agreements, however, the need of other bodies constituted on the joint principle became urgent. To meet this need, the Commissariat of Labour set up² conciliation boards and arbitration courts attached to the local departments of the Commissariat of Labour. The Central Trade Union Council cleared up the obscurities of procedure by issuing instructions stating that the continued existence of the trade union disputes committees was no longer justified, and that disputes which could not be settled by agreement before the joint committee of an undertaking should be submitted directly to the conciliation board of the local labour department. This decision was approved by a resolution of the Fifth Trade Union Congress, which added that a dispute could not be submitted to a higher authority until the trade union had exhausted all means of arriving at a direct agreement. The resolution of the Congress declared that "it is inadmissible that the trade unions should alone be competent to conciliate in disputes"³.

From the first it was provided that recourse to the conciliation board should be optional, the very principle of conciliation proceedings resting on the assumption of previous agreement between the parties to the dispute. The question whether arbitration should be optional or compulsory, on the contrary, gave rise to prolonged discussion in the Central Trade Union Council, some of the members of the Council being of the opinion that compulsory arbitration would afford a more serious guarantee of the protection of the worker's rights. The Council finally adopted the view of the Commissariat of Labour, which advocated voluntary arbitration except in the following cases: that of a dispute in an undertaking where the workers are not covered by collective agreement, and that of a dispute which directly involves social legislation or threatens the safety of the State. In these cases arbitration may be ordered by the Commissariat of Labour.

The supporters of compulsory arbitration then demanded that the trade unions should have the sole right to apply for arbitration. They were more or less successful, for the Labour

¹ These committees were first set up at the beginning of 1922, but it was not until 3-18 November 1922 that the Commissariat of Labour for the R. S. F. S. R. issued a Decree governing their activity.

² By Decree of 13 July 1922.

³ *Verbatim Report of the Fifth All-Russian Congress of Trade Unions. Moscow, 1922.*

Code, which came into force on 15 November 1922, shortly after the Fifth Trade Union Congress closed, granted this right to trade unions in all State undertakings ¹.

EVOLUTION OF THE PRESENT SYSTEM OF SETTLEMENT OF DISPUTES

The system of conciliation and arbitration was sanctioned by the Labour Code, which came into force on 15 November 1922 ², and the Decrees and Orders issued by the Labour Commissary to supplement the provisions of the Code. This system dealt in the first place with contraventions of labour legislation and the conditions of employment established by collective agreements and individual employment contracts, or by rules of employment. Such contraventions were treated as offences over which only the labour courts — or, more precisely, the labour sessions of the people's courts of first instance — had competence. Secondly, the Code recognised labour disputes properly so called, which were divided into two classes : (a) disputes arising out of the conclusion, amendment, or interpretation of collective agreements ; (b) disputes arising out of the application of or failure to apply, collective agreements or individual contracts of employment.

From the first, Soviet legislation held that disputes in class (a) could only be within the competence of the joint conciliation boards attached to the local departments of the Commissariat of Labour and the arbitration courts set up by the same departments.

On the other hand, it was agreed in principle for disputes in class (b) that the first authority to take cognisance of them should be the joint committee of the undertaking where the dispute occurred. This was for instance the opinion of the Central Council of Trade Unions from the beginning, and was advocated by all the trade union congresses. If the dispute were not settled by the joint committee, whose decisions have to be unanimous, or if the decision of the committee were set aside by the competent institution of the Commissariat of Labour, the Labour Code decided, with regard to the further treatment of the case, that the party concerned should be free to choose between the labour court on the one hand and the conciliation board or arbitration court on the other. The Code only provided that the worker could

¹ By the decision of the Fourteenth Congress of the Communist Party, this right was conferred in 1926 also on the managers of State undertakings.

² *Legislative Series*, 1922, Russ. 1.

not have recourse to the conciliation board or arbitration court unless his interests were defended by his trade union. This measure was the outcome not only of the very structure of the conciliation boards and arbitration courts, which had to include a representative of the union for the workers' side, but of the desire to prevent individual disputes of minor importance from cumbering the work of the arbitration and conciliation institutions.

The Labour Code, and the subsequent Orders of the Commissariat for Labour on the organisation and working of the arbitration and conciliation institutions, did not deal with the case in which a person applies simultaneously to the labour court and the conciliation board, nor did they contain any categorical statement on the impossibility of submitting to the labour court a case that had already been settled by the joint committee. Furthermore, this legislation did not in any way limit the number of authorities with competence to set aside the decisions of the conciliation boards and the awards of the arbitration courts. It merely stated that the Commissariats of Labour and their local departments had competence with regard to the joint committees, the conciliation boards, and the arbitration courts, and that the office of the Labour Prosecutor had competence with regard to the labour courts. This lack of precision in the law has not failed to produce a certain amount of confusion and many abuses of procedure, and to some extent it has even paralysed the working of the whole system. This may be illustrated by the following passage in the report of the Central Council of Trade Unions to the Eighth Congress (1928) :

Until recently the system for the settlement of disputes involved incredible delays. The overlapping between the different authorities, their intricacy, and the fact that the decisions taken were hardly final, contributed largely to this result. Disputes could come before twenty-three authorities. A case could be brought up repeatedly before the same authority if the higher authorities failed to take a final decision on its merits, and merely set aside previous decisions, asking the lower authorities to reconsider the case. Once a dispute had been submitted to the institutions of the Commissariat of Labour, it could be carried right up to the Labour Commissary of the U. S. S. R. A dispute referred to the courts could be carried right up to the Supreme Court. With this system it was possible for a dispute to drag on for years ¹.

On several occasions the Commissariat for Labour issued instructions on the need of organising the procedure for dealing

¹ "The Trade Unions of the U. S. S. R. in 1926 to 1928." *Report of the Central Council of Trade Unions of the U. S. S. R. to the Eighth Congress*, pp. 368-369. Moscow, 1928.

with disputes so as to reduce delays and hasten the adoption of a final settlement ¹.

The Fourteenth Congress of the Communist Party, too, urged in a resolution that the examination of disputes should be decentralised so as to speed up procedure. Finally, the Seventh Congress of Trade Unions (December 1926), noting that all these recommendations had not had the desired effect, considered the need of reorganising the system of conciliation and arbitration and the procedure before the labour courts.

In 1927 the Commissariat for Workers' and Peasants' Inspection (State supervision), in close touch with the Central Executive Committee of the Communist Party on the one hand and the Commissariat of Labour of the U. S. S. R. on the other, together with the Central Trade Union Council and the central committees of the principal unions, attacked the question of principle. It was clear from the outset that the first thing to do was to clear away the obscurities in the legislation on disputes and to issue new orders on the working and competence of all disputes authorities. The question of the order of procedure did not give rise to much difference of opinion. All were more or less agreed with the Commissariat of Labour, which had advocated in its circular letter of 20 May 1926 that the conciliation boards and arbitration courts should deal only with disputes arising out of the conclusion, amendment, and interpretation (of the substance) of collective agreements. Individual disputes arising out of the application of collective agreements and individual contracts of employment should be within the competence of the joint committees and labour courts.

The second question to be settled was that of the appeal authorities who would have the power to set aside the decisions of the disputes authorities. The excessive number of appeal authorities had been one of the causes of the slowness hampering the normal progress of litigation, and it was therefore decided to deal with it radically by reducing the number of such authorities to not more than two. Only the Commissariats of Labour and their departments were to have this power in respect of the conciliation and arbitration authorities. The Labour Prosecutor was to have only a general right to contest the decision if it was in flagrant contradiction with the law, threatened the safety of the State, or seriously injured the interests of the workers. The regional

¹ Instructions of the Commissariat for Labour of the U. S. S. R., 20 May and Circular Letter of the Commissariat, 2 March 1927.

court was the only appeal authority accepted in the case of the decisions of the labour courts.

Another important decision was that which substantially reduced the time limits within which disputes could be submitted to the joint committee or the labour court. Formerly, the right to submit a dispute did not lapse for three years, a period fixed by the Civil Code. It was not until 1927¹ that this period was reduced to six months for disputes on overtime pay and dismissals. On the ground that the three-year period often seriously complicated the treatment of cases before the courts (difficulty of obtaining exact information, etc.), it was decided to reduce it to fourteen days in cases of dismissal, one month in wage questions, and three months in other cases. Similarly, it was decided to fix short and clearly defined time limits for the examination of cases before the conciliation and arbitration authorities and before the labour courts, as these bodies frequently postponed cases from session to session, thus helping to complicate and delay the settlement.

Finally it was decided that any decision of the court giving material satisfaction to the worker should be enforced immediately, whether an appeal was brought against the decision or not, provided that the sum to be paid at once by the employer did not exceed the monthly wages of the worker.

All these decisions were incorporated in the new Act on disputes promulgated by the Central Executive Committee of the U. S. S. R. on 29 August 1928.

PRESENT SYSTEM OF SETTLEMENT OF DISPUTES²

Procedure

As indicated above, Soviet legislation classifies labour disputes into three groups: (a) disputes arising out of the conclusion, amendment, or interpretation of the substance of collective agreements; (b) disputes arising out of the application of contracts of employment, collective agreements, or social legislation; (c) cases of failure to observe, or of contravention of, labour legislation and the provisions of collective agreements or

¹ Decree of the Central Executive Committee of the R. S. F. S. R., 10 Oct. 1927 (*Izvestia N. K. T.*, 1928, Nos. 1-2).

² Cf. the Labour Code; Decree of the U. S. S. R. Central Executive Committee, 29 Aug. 1928 (*Collection of Laws of the U. S. S. R.*, 1928, No. 56, § 495); Orders of the U. S. S. R. Commissariat of Labour on the Working and Competence of Arbitration and Conciliation Institutions, 12 Dec. 1928. (*Izvestia N. K. T.*, 1928, Nos. 51-52.)

individual contracts of employment. The procedure to be followed differs according to the group to which the dispute belongs.

(a) *Disputes Arising Out of the Conclusion of a Collective Agreement*

When a dispute occurs during negotiations between a trade union and an employer¹ for the conclusion, amendment, or interpretation of a collective agreement, the matter can be referred only to a conciliation board or arbitration court as agreed by the parties. Conciliation boards can be set up only if both parties so desire. On the other hand, if the dispute takes place between a trade union and the State as employer, the constitution of an arbitration court is compulsory at the request of either party alone.

A dispute that is not settled by amicable agreement before the conciliation board is taken to the arbitration court. If the parties fail to agree before this court, its referee settles the dispute.

The decisions of the conciliation boards and arbitration courts are final and irrevocable. But if the decision of the court or board contravenes the law or the provisions of the collective agreement, or if it suffers from a defect of form that may entail serious consequences, or if it was based on false or inaccurate documents or false declarations, or finally, if the board or court was unaware of facts or documents that might have had a decisive influence on the settlement of the dispute, the decision may be set aside by the institution of the Commissariat of Labour immediately above that to which the board or court is attached. An application for the setting aside of the decision may be made by either party or by the institution of the Commissariat of Labour responsible for supervising the work of the conciliation board or arbitration court.

(b) *Disputes Arising Out of the Application of a Collective Agreement or Individual Contract of Employment*

When a dispute arises out of the application of a collective agreement or individual contract of employment, it may be referred at the choice of the worker to the joint committee or to the labour court².

¹ Under Soviet law the term "employer" includes the State, co-operative societies, municipalities, etc., as well as private employers or concessionaires.

² When the dispute relates to the following subjects, reference to the joint committee is compulsory :

- (a) Transfer of a worker from one job to another ;
- (b) Remuneration of a worker who has not reached the individual standard of output fixed by the collective agreement (whether on time work or piece work) ;
- (c) Remuneration of workers during suspensions of work due to the temporary stoppage of the undertaking or part of the undertaking ;
- (d) Various kinds of compensation (for the probationary period, for annual

The decisions of the joint committee must be unanimous. They are final and irrevocable except in the cases enumerated above for conciliation boards and arbitration courts. The regional departments of the Commissariat of Labour have competence to set aside the decisions of the joint committees in the said cases, either on their own initiative or at the request of either party.

If the case is not settled by the joint committee, it is referred to the labour court. If the decision of the joint committee is set aside, the labour department responsible for doing so decides whether the case shall be referred back to the joint committee or submitted to the labour court.

An appeal against the decision of the labour court may be taken to the ordinary regional court, except in cases involving sums not exceeding the monthly wages of the worker, or disciplinary penalties, or deductions from wages. In these cases, the decision of the labour court is final ¹.

Unless the regional court rejects the appeal or declares that it has no competence in the matter, it may settle the case itself or refer it back to the labour court for reconsideration.

The work of the labour courts is supervised by the labour prosecutor's office, which may appeal to the regional court for the cancellation of the decision.

(c) *Contraventions of Contracts of Employment or Labour Legislation*

All cases of contravention of individual contracts of employment, collective agreements or labour legislation are solely in the competence of the labour courts, and are treated as offences.

Similarly, if during the consideration of a dispute by the joint committee, the conciliation board or the arbitration court, it appears that the case involves a contravention of the law or a

leave not taken, for wear and tear of working tools belonging to the worker, etc.) ;

(e) Dismissal for inefficiency or refusal to work ;

(f) Working clothes and special food supply (milk, fats) ;

(g) Short time ;

(h) Additional leave ;

(i) Remuneration for a worker who does several jobs paid at different rates ;

(k) Deductions from wages for waste or for breakages of machinery and tools by the worker ;

(l) Bonuses due to the workers ;

(m) Overtime pay ;

(n) Compensation on leaving when the termination of the contract of employment resulting in the worker's leaving is due to the employer ;

(o) Compensation for the period during which the worker is prevented from working by the employer.

¹ If the worker has been dismissed from the undertaking against which he institutes proceedings, an appeal against the decision may be made.

contract of employment or collective agreement, a report to that effect must be drawn up and sent to the labour court, which opens an enquiry and decides on the proceedings to be taken against the offender.

§ 3. — Conciliation and Arbitration Institutions

The principal institutions for conciliation and arbitration are the joint committees, the conciliation boards, and the arbitration courts ¹.

There are special disputes committees for certain groups of workers, such as agricultural workers, domestic workers, and seasonal workers employed in felling and floating timber.

For railway and water transport there are special conciliation boards and arbitration courts, in view of the special conditions of employment in these industries. As a matter of fact, these bodies differ very little from the ordinary conciliation boards and arbitration courts.

CONCILIATION BOARDS

Organisation

The conciliation boards are permanent bodies attached to the Commissariats of Labour of the Federated States, and their local departments. There are a Central Conciliation Board attached to the Commissariat of Labour of the Soviet Union, conciliation boards attached to the Commissariats of Labour of the Federated States and the Republics and autonomous regions belonging to each of the Federated States, and finally, boards attached to the local labour departments.

A conciliation board is composed of a chairman appointed for a certain period ² by the department of the Commissariat of Labour to which the board is attached, and one representative of each of the two parties to the dispute ³.

¹ The joint committees deal only with individual disputes. An account of their competence and working is given in an appendix, together with a survey of the organisation of the labour courts.

² Soviet legislation contains no provision on the term of office of the chairman of the conciliation board. Nor does it state whether the sittings of the board are public or not.

³ In the case of the interpretation or modification of a collective agreement, only the organisations concluding the agreement can be regarded as parties to the dispute.

Only a delegate of the workers' union may represent the workers, and the employer's representative must be a member of the management of the undertaking or group of undertakings (trust). The representatives of the parties must be nominated for each dispute by the parties. It is the duty of the chairman to check their credentials before opening the proceedings.

The conciliation boards are set up only on a request being made to the competent department of the Commissariat of Labour by common agreement between the parties. In making the application each party must state in writing its views on the dispute and the settlement it proposes.

The technical organisation of the conciliation board and the remuneration of the chairman is in the hands of the department of the Commissariat of Labour to which the board is attached. The representatives of the parties and experts, witnesses, etc. have no right to special remuneration, but the undertaking employing them is bound to pay them their full wages during the whole period they devote to the conciliation board, if the sittings are held during their normal hours of work¹.

Competence

The conciliation board has competence to consider all disputes arising out of the conclusion, amendment, or interpretation of a collective agreement. It may not agree to consider a dispute unless the interests of the workers are represented by their trade union.

In no case may a conciliation board consider a dispute that has already been settled or is being considered by the joint committee, the arbitration court or the labour court.

The *district conciliation boards*, attached to the district departments of the Commissariat of Labour, have competence in disputes covering only one district.

The *regional conciliation boards*, attached to the regional departments of the Commissariat of Labour, have competence in disputes affecting several districts or a whole region.

The *conciliation boards*, attached to the Commissariat of Labour of an autonomous republic or a Federated State, have competence in disputes that affect the whole or part of the autonomous republic or Federated State, or are of a serious nature.

¹ According to the Ordinance of 21 May 1931 (*Izvestia*, 27 May 1931), the sittings of the conciliation boards must be held outside the normal hours of work of the parties concerned.

The *Central Conciliation Board*, attached to the Commissariat of Labour of the U. S. S. R., has competence in disputes that affect the territory of several Federated States or raise important questions of principle, or are particularly serious. Its chairman is the U. S. S. R. Labour Commissary in person, or a high official of the Commissariat to whom he may delegate his powers.

Procedure

The conciliation board must take its decision within seven days, and the decision must be the result of agreement between the parties. The chairman has not the right to vote, his function being to direct the negotiations with a view to obtaining a settlement that will satisfy both parties without injuring the interests of the State. If either party fails to send its representative to the conciliation board, the latter has no competence and the case is closed. To have it reopened before the board, the parties must again arrive at an agreement.

When an agreement has been reached on the dispute, a report is drawn up and signed by the chairman and the representatives of the parties. Copies of this report must be sent within seventy-two hours to the parties and the competent department of the Commissariat of Labour ; and as soon as that has been done, the decision of the board becomes binding on both parties with the force of law.

If the case involves a sum of money and this sum is not definitely fixed in the agreement between the parties before the conciliation board, the department of the Commissariat of Labour requests the labour court to define the exact amount.

Enforcement of the Decision

The duty of enforcing the decision of the conciliation board lies with the parties.

If the employer refuses to observe the decision of the conciliation board, the injured workers may apply in person or through their trade union to the labour court to compel the employer to fulfil his obligations.

If the trade union refuses to carry out the decision of the board, the employer may apply to the competent department of the Commissariat of Labour, which then invites the trade union organisation immediately above the recalcitrant union to take the necessary steps to compel it to observe the decisions of the board. In the case of the workers taken separately, it is for the trade

union that countersigned the decision of the board to see to it that they fulfil their obligations.

If during the discussion it is found that the case shows serious contraventions of labour legislation or the provisions of the collective agreement, or if it is evident that the employer has displayed culpable negligence, sabotage or rapacity, the conciliation board draws up a report to that effect and refers it to the labour court. If this does not affect the merits of the case at issue, the board may continue its discussions ; otherwise it hands over the whole case to the labour court.

Cancellation of Decisions

The decision of the conciliation board may be set aside in the following cases :

- (1) when by its decision the board establishes conditions of employment less or more favourable than those fixed by legislation or the collective agreement¹ ;
- (2) when it has failed to observe the law on conciliation and arbitration or on the working, competence or procedure of conciliation and arbitration institutions, provided that this failure influenced the decision taken ;
- (3) when the decision was based on documents, information or declarations that have been recognised to be false or untruthful by a decision of the courts, or could quite patently be recognised as such ;
- (4) when the board was not acquainted with facts that might have had a capital importance for the settlement of the dispute ;
- (5) when the dispute considered by the board has already been settled by the labour court or is pending before it.

Only the department of the Commissariat of Labour to which the board is attached may set aside its decision. It may do so on its own initiative within not more than three months of the date it receives official notice of the decision. It may also set aside the decision at the request of either or both parties within seven days of receiving such request, which must be made within fourteen days of the decision.

¹ This applies to collective agreements concluded by organisations with authority over the organisations party to the dispute (e.g. an agreement between a State industrial trust and a central trade union committee, if the dispute has taken place in an undertaking belonging to the trust).

A decision of the department of the Commissariat of Labour of this kind may be appealed against by the parties. This appeal must be made to the department of the Commissariat of Labour immediately above the one in question ; which department, moreover, has a right to set it aside on its own initiative. Such a decision is final and only the Labour Prosecutor may contest it¹.

When the head of the labour department presides over the board of conciliation in person, its decision can be set aside only by the department of the Commissariat of Labour immediately above that to which the board is attached. In that case, the decision of this department is final, and no request for its cancellation may be made except by the Labour Prosecutor.

The Labour Prosecutor may request the department of the Commissariat of Labour which has competence to set aside the decision of the conciliation board, or the department immediately above it, as the case may be, to set aside the decision reached. He may make use of this right only in exceptionally serious cases of flagrant contravention of the law or grave threat to the interests of the State or the workers.

An appeal for the cancellation of the decision of the board made by either party or the Prosecutor cannot suspend its enforcement, unless the competent department of the Labour Commissariat decides otherwise.

ARBITRATION COURTS

Organisation

The arbitration courts are attached to the same departments of the Commissariats of Labour as the conciliation boards. Each court consists of two judges and a referee, the former being nominated for each individual case by the parties to the dispute. The trade union appoints one of its representatives, and the employer, a member of the management of the undertaking or group of undertakings. The referee is chosen by common agreement among the parties, preferably from among the higher officials of the Com-

¹ The Labour Prosecutor's Office is part of the judiciary. It is presided over by the Labour Prosecutor who also acts as an assistant to the General Prosecutor in the Supreme Court. The regional prosecutors for the industrial regions are assisted by special assistant prosecutors for labour disputes. It is the duty of the Labour Prosecutor : (a) to supervise the working of the labour courts and the conciliation and arbitration institutions ; (b) to take proceedings against officials and employers who contravene labour legislation. The Labour Prosecutor attached to the Supreme Court may contest any decision of a conciliation or arbitration institution or labour court by requesting the competent department of the Labour Commissariat to set it aside, provided that the decision involves a judicial error or danger to the State.

missariat of Labour. If the parties fail to agree on a referee, or the constitution of the court is demanded by only one of the parties, the referee is appointed by the department of the Commissariat of Labour to which the court is attached.

Before applying for the constitution of a court, the parties must draw up a report, stating their joint decision to submit the dispute to arbitration and declaring in advance their readiness to submit to the award of the court. The Commissariat of Labour cannot set up the court until it has received this report. Nevertheless, if a dispute breaks out in a State undertaking, the trade union or the management may apply for arbitration even if the other party objects. In that case, arbitration is compulsory and a report is not necessary for the constitution of the court.

Before the proceedings open, each party must submit in writing its opinion on the dispute and the settlement it proposes.

If the dispute threatens to have grave consequences, the competent department of the Commissariat of Labour has the right to initiate arbitration proceedings on its account without consulting the parties. In that case it appoints the referee and nominates the judges *ex officio* if the parties refuse to designate their representatives.

Competence

The arbitration courts have competence to consider the same disputes as the conciliation boards, whether the case has previously been submitted to such a board or not. The respective competence of the regional, district, etc., arbitration courts is the same as that of the corresponding conciliation boards.

The arbitration court may not consider a dispute unless the interests of the workers are represented by their trade union.

The court may not consider a dispute that is pending before a conciliation board or a labour court, or that has already been settled by one of these bodies.

If arbitration proceedings are instituted by common agreement between the parties and either party fails to send its representative (judge) to the court, the latter has no competence to decide on the dispute and the case is closed. It cannot be re-opened before the court until the parties have agreed. If the court is set up at the request of one of the parties only and the other party fails to attend without valid reason, the dispute is settled by the referee ¹.

¹ It is for the referee to judge of the validity of the reasons submitted ; if he considers them valid, the case is dismissed.

If, on the other hand, the party applying for arbitration fails to appear, the court has no competence and the case is closed.

Procedure

The court must give an award within seven days of receiving the report applying for the opening of arbitration proceedings.

When the arbitration court has been set up, the referee, after checking the credentials of the judges, first proposes to the parties to settle the dispute by amicable agreement. If the parties cannot, or will not, do so, the referee pronounces his award, which becomes binding as soon as the final record has been signed by him and transmitted within seventy-two hours to the parties concerned and the competent department of the Commissariat of Labour.

If the case involves a sum of money and this sum is not definitely fixed in the agreement between the parties before the arbitration court, the department of the Commissariat of Labour requests the arbitration court to define the exact amount.

Enforcement and Cancellation of Awards

The enforcement and cancellation of the awards of the arbitration courts are subject to the same rules as apply to the conciliation boards.

§ 4. — Statistics of Disputes

The following tables illustrate the progress of conciliation and arbitration in the U. S. S. R. during the period 1924-1925 to 1927-1928.¹

DISPUTES IN 1924-1925 AND 1925-1926²

TABLE I. — NUMBER OF DISPUTES

	Number of disputes	Number of workers involved
1924-1925.	2,357	1,585,100
1925-1926.	4,999	4,059,400

¹ More recent data are not available.

² According to the data of the Commissariats of Labour of the U. S. S. R., the R. S. F. S. R., and White Russia, and the labour departments of seventy-eight regional centres (*Labour Statistics and Social Insurance in 1925-1926*; published by *Voprosy Truda*, Moscow, 1927; 88 pp.).

TABLE II. — PERCENTAGE DISTRIBUTION BY BODIES
SETTLING THE DISPUTE*Disputes Settled*

	Conciliation board alone	Conciliation board and arbitration court	Arbitration court alone
1924-1925	19.4	14.4	66.2
1925-1926	14.7	18.2	67.1

Workers Involved

	Conciliation board alone	Conciliation board and arbitration court	Arbitration court alone
1924-1925	3.2	5.3	91.5
1925-1926	16.1	7.0	76.9

TABLE III. — DISTRIBUTION BY CAUSE OF DISPUTES SUBMITTED
TO CONCILIATION AND ARBITRATION

Cause of dispute	Percentage of disputes ¹		Percentage of workers involved in disputes ¹	
	1924-1925	1925-1926	1924-1925	1925-1926
Wage rates	69.3	79.3	83.5	99.8
Payments by undertakings for the housing of the workers and for the trade unions	40.6	39.9	57.0	48.6
Compensation for dismissal and for annual leave not taken	19.2	19.0	12.7	14.6
Engagement and dismissal of workers	6.1	7.1	1.4	8.6
Protection of workers (safety, special clothing, etc.)	21.7	26.4	27.8	28.1

¹ As each dispute was due to several causes, the total of the percentages is not 100.

TABLE IV. — PERCENTAGE DISTRIBUTION BY RESULT OF DISPUTES
SETTLED, CLASSIFIED ACCORDING TO CAUSE

Cause of dispute	Result of dispute					
	1924-1925			1925-1926		
	In favour of union	In favour of em- ployer	Com- promise	In favour of union	In favour of em- ployer	Com- promise
Basic wage rates	24.8	23.7	51.5	17.9	15.4	66.7
Payments by undertakings for union	45.1	27.2	27.7	39.0	20.5	40.5
Compensation for dismissal and for annual leave not taken . .	38.0	41.7	20.3	24.3	44.9	30.8
Engagement and dismissal of workers	54.6	19.2	26.2	33.0	11.3	55.7
Hours of work	48.0	30.4	21.6	7.3	33.1	59.6

TABLE V. — RESULTS OF DISPUTES RELATING TO WAGE RATES ¹

Result of dispute	Percentage of disputes		Percentage of workers involved	
	1924-1925	1925-1926	1924-1925	1925-1926
(a) In favour of union	33.7	24.8	10.2	17.9
(b) In favour of employer	19.8	23.7	7.3	15.4
(c) Compromise	46.5	51.5	82.5	66.7

¹ According to the data of the conciliation boards and arbitration courts of the Commissariats of Labour for the U. S. S. R. and the R. S. F. S. R. and the labour departments of 100 regional centres (150 in 1925-26).

DISPUTES IN 1926-1927 AND 1927-1928 ¹

TABLE I. — NUMBER OF DISPUTES

	Number of disputes	Number of workers involved
1926-1927.	4,694	3,251,500
1927-1928.	3,888	3,341,200

¹ According to the data of the Commissariats of Labour of the U. S. S. R., the R. S. F. S. R., the Ukraine, and White Russia, and the labour departments of fifty regional centres (*Voprosy Truda*, 1930, Nos. 3-4).

TABLE II. — PERCENTAGE DISTRIBUTION BY BODIES SETTLING THE DISPUTE

Disputes Settled

	Conciliation board alone	Conciliation board and arbitration court	Arbitration court alone
1926-1927	13.6	20.7	65.7
1927-1928	19.9	22.7	57.4

Workers Involved

	Conciliation board alone	Conciliation board and arbitration court	Arbitration court alone
1926-1927	8.5	13.6	77.9
1927-1928	12.8	13.1	74.1

TABLE III. — DISTRIBUTION BY CAUSE OF DISPUTES SUBMITTED TO CONCILIATION AND ARBITRATION

Cause of dispute	Percentage of disputes ¹		Percentage of workers involved in disputes ¹	
	1926-1927	1927-1928	1926-1927	1927-1928
Wage rates	73.5	75.7	76.4	71.2
Payments by undertakings for the housing of the workers and for the trade unions . . .	41.2	41.2	47.0	39.0
Compensation for dismissal and for annual leave not taken . .	23.4	19.1	21.5	20.4
Engagement and dismissal of workers	19.4	17.0	22.0	18.9
Protection of workers (safety, special clothing, etc.)	37.2	41.7	46.3	48.6

¹ As each dispute was due to several causes, the total of the percentages is not 100.

TABLE IV. — PERCENTAGE DISTRIBUTION BY RESULT OF DISPUTES SETTLED, CLASSIFIED ACCORDING TO CAUSE

Cause of dispute	Result of dispute					
	1926-1927			1927-1928		
	In favour of union	In favour of employer	Compromise	In favour of union	In favour of employer	Compromise
Basic wage rates	24.0	20.1	55.1	26.0	17.3	56.7
Payments by undertakings for the housing of the workers and for the trade unions	26.9	36.3	36.8	36.3	31.3	32.4
Compensation for dismissal and for annual leave not taken . .	31.0	44.4	24.6	40.9	28.9	30.2
Engagement and dismissal of workers	45.7	14.3	40.0	40.4	14.6	45.0
Protection of workers (safety, special clothing, etc.)				36.1	22.1	46.3

TABLE V (a). — PERCENTAGE DISTRIBUTION OF DISPUTES BY BODY SETTLING THE DISPUTE, CLASSIFIED BY CAUSE OF DISPUTE

Cause of dispute	Percentage settled by			
	1926-1927		1927-1928	
	Conciliation board	Arbitration court	Conciliation board	Arbitration court
Wage rates	12.6	87.4	20.4	79.6
Payments by undertakings for housing and for the trade union	—	—	22.1	77.9
Compensation for dismissal and annual leave not taken	12.4	87.6	26.8	73.2
Engagement and dismissal of workers	14.2	85.8	32.2	67.8
Protection of workers (safety, special clothing, etc.)	—	—	22.2	77.8

The sign — signifies that there are no data.

TABLE V (b). — PERCENTAGE DISTRIBUTION OF WORKERS INVOLVED IN DISPUTES BY BODY SETTLING THE DISPUTE, CLASSIFIED BY CAUSE OF DISPUTE

Cause of dispute	Percentage of workers involved in disputes settled by			
	1926-1927		1927-1928	
	Conciliation board	Arbitration court	Conciliation board	Arbitration court
Wage rates	6.1	93.9	8.9	91.1
Payments by undertakings for housing and for the trade union	—	—	1.2	98.8
Compensation for dismissal and annual leave not taken	7.0	93.0	12.5	87.5
Engagement and dismissal of workers	24.3	75.7	18.3	81.7
Protection of workers (safety, special clothing, etc.)	—	—	19.4	80.6

TABLE VI. — SETTLEMENT OF DISPUTES BY ARBITRATION COURTS IN 1926-1927 AND 1927-1928

Distribution of Disputes and Workers by Procedure of Settlement

Cause of dispute	Percentage of disputes settled by						Percentage of workers involved in disputes settled by					
	Referee		Agreement between parties		Referee and agreement between parties		Referee		Agreement between parties		Referee and agreement between parties	
	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928
Wage rates	57.8	57.7	19.2	23.3	23.0	19.0	52.8	53.6	17.4	13.2	29.8	33.2
Payment of undertakings for housing and the trade union	—	59.5	—	30.0	—	10.5	—	54.8	—	21.4	—	23.8
Compensation for dismissal and for annual leave not taken	62.4	60.4	32.8	30.6	4.8	9.0	58.8	58.4	35.4	33.2	5.8	8.4
Engagement and dismissal of workers	45.5	45.6	41.1	35.0	13.4	19.4	42.6	37.6	43.1	51.1	14.3	11.5
Protection of workers (safety, special clothing, etc.)	—	50.2	—	29.3	—	20.5	—	40.2	—	35.2	—	18.6

Distribution by Result of Disputes and Workers, in Disputes Settled by Referee

Cause of dispute	Percentage of disputes settled						Percentage of workers involved in disputes settled					
	In favour of union		In favour of employer		By compromise		In favour of union		In favour of employer		By compromise	
	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928	1926-1927	1927-1928
Wage rates	25.8	32.7	26.6	22.5	47.6	44.8	28.9	35.5	10.1	10.2	61.0	54.3
Payment of undertakings for housing and the trade union	—	39.1	—	29.5	—	31.4	—	15.1	—	13.1	—	71.8
Compensation for dismissal and for annual leave not taken	26.2	44.1	56.9	34.9	16.9	21.0	48.7	16.1	40.0	46.8	11.3	37.1
Engagement and dismissal of workers	57.2	47.2	14.2	20.8	28.6	32.2	44.5	46.8	20.4	22.1	35.1	31.1
Protection of workers (safety, special clothing, etc.)	—	32.0	—	33.4	—	33.7	—	12.6	—	35.7	—	51.7

APPENDIX I

Joint Committees

ORGANISATION

A joint committee (*rastenochnokonfliktnaia kommissia* or "R. K. K.") is set up in any undertaking where there is a workers' committee (*fabzavkom*). If the undertaking has no workers' committee, as is usually the case for those employing less than thirty workers, the joint committee is attached to the local workers' committee acting for a group of undertakings (*groupkom*)¹. In large undertakings joint committees may also be set up in the more important workshops.

The joint committee must consist of an equal number of representatives of the parties, the number being fixed by agreement between the trade unions and the management². The chairman and secretary of the committee may not both represent the same party. At each sitting these officers for the next sitting are appointed, in such a way that the offices are held alternately by representatives of either party.

The joint committee must be convened by the chairman within three days of the submission to it of a dispute.

The sittings are not public and are attended only by the members of the committee, the parties concerned, and any persons invited by the committee, for it has the right to request the opinion of experts, witnesses and other persons. Such persons can only act in an advisory capacity.

¹ If there is no local workers' committee (*groupkom*) for the region, the joint committee is attached to the local trade union committee and consists of a representative each of the trade union committee and the employer concerned.

² The workers' committee and the management respectively fix the term of office of the parties' representatives on the joint committee, and inform the other party of their decision.

A member of the committee who is personally interested in the result of the dispute must be replaced by a substitute. The persons concerned in the dispute have, moreover, the right to ask for the exclusion of a member whom they consider to be a party to the dispute. In the case of a representative of the workers, the satisfaction of such a request needs the approval of the workers' group of the committee, and in the case of an employers' representative it needs that of the employers' group (the State or a private individual).

All the sittings of the joint committee take place as a rule outside the hours of work of the undertaking. The workers personally concerned in the result of the discussion may attend the meeting.

The members of the joint committee and the experts, witnesses, etc., they summon, are entitled to the average wages they earn for their work in the undertaking in respect of all the time they spend on the sittings of the committee, when these sittings are held during the normal hours of work of the persons concerned. All administrative expenses are met by the undertaking.

COMPETENCE

In their capacity as conciliation authorities, the joint committees may deal with any individual or collective dispute concerning the application or interpretation of the conditions of employment fixed by legislation, individual contracts of employment, collective agreements, or rules of employment, except in the following cases :

- (1) Modification of wages fixed by the rules in accordance with the State wage regulations.
- (2) Changes in the staff.
- (3) Termination of contracts of employment at the request of the trade unions.
- (4) Dismissal and re-engagement of administrative staff in all undertakings, and of responsible officials in public or co-operative State undertakings.
- (5) Questions of the housing and material welfare of workers, if the dispute does not arise out of a clause of a contract of employment or collective agreement.
- (6) Disciplinary penalties imposed by the authorities to whom the worker is subordinate.

The joint committees may in no case deal with disputes arising out of the conclusion of collective agreements or aiming at an amendment of an agreement. They have no power to consider disputes already settled by the conciliation board, the arbitration court or the labour court, or disputes pending before one of these bodies.

PROCEDURE

The joint committee must decide within three days on any dispute regularly referred to it by one of the parties. The employer addresses himself to the committee directly, while the worker acts as a rule through the workers' committee of the undertaking, though he has the right to apply to the committee in person. Before applying to the committee, however, the worker must enter into direct negotiation with the management in order to try to settle the dispute by amicable agreement ¹.

¹ This provision does not apply to disputes affecting several workers.

When a dispute has been referred in due order to the joint committee, the chairman or secretary must first decide whether it can be heard. They consider first whether it is within the competence of the committee, and if so, whether the parties have observed the time limits fixed by law. These limits are as follows : If the dispute relates to a dismissal, it must be referred to the joint committee within fourteen days of the actual dismissal. If the worker was dismissed for breach of the contract of employment, the time limit is reckoned from the date of his offence. If the dispute relates to overtime pay, the maximum period is one month reckoned from the date on which the worker was entitled to claim overtime pay. For all other disputes, the time limit is three months reckoned from the date on which the injured party was entitled to submit his claim to the other party. After these time limits have expired the case can no longer be referred to the joint committee. If, however, the committee is unanimously agreed that the delay is due to *force majeure*, it may agree to consider a case referred to it after the expiration of the statutory time limit ¹.

Decisions taken by the joint committee for the settlement of a dispute must be unanimous. Any decision adopted by a majority only is null and void and must be set aside by the department of the Commissariat of Labour responsible for supervising the activities of joint committees. This also applies to decisions of the committee sanctioning unlawful action by the employer. If a joint committee has settled a dispute by a decision taken in accordance with the regulations for conciliation proceedings, its decision acquires the force of law, once the final record has been signed by the chairman and secretary of the committee, and it then becomes binding on both parties ². The decision of the joint committee must be made public within seventy-two hours, and a copy of the deed must immediately be sent to the parties and the competent department of the Commissariat of Labour. If either party fails to observe the decision, the other has the right to inform the department of the Commissariat of Labour. If the employer is the delinquent, the joint committee applies to the said department, which may compel the employer by administrative action to observe the decision. If, on the other hand, it is the worker who fails to comply with the decision of the committee, the department of the Commissariat of Labour requests the competent trade union to require the worker to observe the decision. The employer cannot be allowed to make deductions from wages, but he has a right to sue a worker who refuses to comply with the decision for damages.

If during the hearing of the dispute it appears that the case presents serious contraventions of the law, culpable negligence, cupidity, or sabotage, the joint committee must immediately inform the Labour Prosecutor through the workers' committee of the undertaking. The Prosecutor may then refer the case to the labour court. This does not mean, however, that the committee ceases to be responsible for hearing the dispute ; but if the criminal action it has noted and its possible

¹ The legislation on labour disputes defines the cases of *force majeure* as follows : (a) Sickness necessitating treatment in a hospital or nursing home ; (b) quarantine or nursing of a sick member of the family ; (c) annual leave ; (d) arrest ; (e) mission ; (f) removal owing to a change of employment ; (g) performance of military service or duties as a judge ; (h) participation in a congress, conference, etc. ; (i) breakdown in the means of communication.

² The parties may by agreement request the committee to re-examine the dispute.

results may affect the decision to be taken by the committee, it suspends any decision until the labour court has decided.

No dispute on which the joint committee has decided may be referred to a higher conciliation or arbitration authority or to the labour court. Its decision may be set aside only in the following cases :

- (1) When by its decision the committee establishes conditions of employment less or more favourable than those fixed by legislation or the collective agreement ¹.
- (2) when it has failed to observe the law on conciliation or arbitration or on the working, competence, or procedure of conciliation or arbitration institutions, provided that this failure influenced the decision taken ;
- (3) when the decision was based on documents, information or declarations that have been recognised to be false or untruthful by a decision of the courts, or could quite patently be recognised as such ;
- (4) when the committee was not acquainted with facts that might have had a capital importance for the settlement of the dispute ;
- (5) when the dispute considered by the committee has already been settled by the labour court or is pending before it.

An appeal to set aside the decision may be taken by the parties ², within fourteen days of the date they are officially informed of the decision of the joint committee, to the local department of the Commissariat of Labour, which alone is responsible for supervising the decisions of the joint committees.

The local department of the Commissariat of Labour must hear the appeal within seven days. If it is admitted, the decision of the joint committee is set aside, and the department of the Commissariat may either refer the case back to the committee for reconsideration or submit it to the labour court. In the cases enumerated above, the local department of the Commissariat of Labour may, on its own initiative, set aside a decision of the joint committee within a maximum period of three months from the date on which it is officially informed of the decision.

An appeal against the decision of the local department of the Commissariat of Labour may be taken to the competent regional department of the Commissariat in the same cases, and subject to the same time limits. The decision of the regional department is final, and no appeal against it is allowed. In exceptional cases, however, if it is considered that this decision is illegal or seriously injures the interests of the State or the workers, the prosecutor may appeal against it to the Commissariat of Labour of the Federated State concerned ³.

¹ This applies to collective agreements concluded by organisations with authority over the organisations party to the dispute (e.g. an agreement between a State industrial trust and a central trade union committee, if the dispute has taken place in an undertaking belonging to the trust).

² Either the worker concerned or the workers' committee or the trade union, or the management concerned, or the management of the group of undertakings.

³ Soviet legislation does not fix a time limit for the intervention of the labour prosecutor. In any case, recent legislation is somewhat obscure on the powers of the prosecutor. Even though the basic Act of 29 August 1928 appears to provide that the prosecutor has the right to ask for the cancellation even of the decision of the higher authority in the Commissariat of Labour, the Order of 12 February 1929 concerning the bodies responsible for supervising the work

As a rule, the appeal does not suspend the enforcement of the decision of the joint committee, unless the local department (or the Commissariat of Labour) decides otherwise.

When a decision of a joint committee has been set aside, all the provisions resulting from that decision are considered null and void with all their effects. Nevertheless, the employer has no right to claim from the worker the reimbursement of any sums he may have paid him under the decision of the committee, unless that decision was based on false declarations by the worker or false documents produced by him before the committee.

APPENDIX II

Labour Courts

ORGANISATION

The labour courts are permanent special sittings of the courts of first instance. They are organised on the decision of the people's courts in all the principal Federated States, autonomous Republics and regions and in the chief industrial centres. Temporary labour courts may be set up in other places by special decision of the judge presiding over the local people's court ¹.

The labour court consists of three judges, namely, one chairman and two assessors. The chairman is one of the judges of the ordinary court of first instance in the locality where the labour court is set up, and he retains his office during the whole period of his judgeship in the ordinary court. The assessors are elected for one year at a time, one by the local inter-trade union council and the other by the local soviet executive committee on the nomination of the local economic council. The first must be a trade unionist, and the second an official in a State industry or State economic institution.

All the expenses of the court and of the remuneration of its members are met by the local authorities.

COMPETENCE

The labour courts have competence to deal with all disputes between an employer and his workers arising out of failure to observe, or contravention of, labour legislation, collective agreements, individual contracts of employment, or rules of employment, whether the claimant is the employer or the worker, in the following cases :

- (a) when the case is not within the competence of the joint committee, or when recourse to the joint committee is optional under the law ;
- (b) when the joint committee has been unable to settle the case ;

of joint committees, conciliation boards, etc., appears to show that the prosecutor may intervene only against the decision of the competent authority of first instance in the Commissariat, while the decision of the authority of second instance (in this case the regional department of the Commissariat of Labour) is irrevocable.

¹ In places where there is no labour court, the cases that would be within their competence are dealt with by the ordinary courts.

- (c) when the decision of the joint committee on the case has been set aside by the competent department of the Commissariat of Labour.

The labour court may not judge a case that has already been settled before the joint committee, the conciliation board, or the arbitration court. It has no competence for disputes arising out of the conclusion, interpretation, or amendment of a collective agreement, except in cases of criminal action (contravention of the law or the agreement) duly noted by the joint committee, the conciliation board, or the arbitration court.

Before examining a case within its competence, the labour court must ascertain that the claimant has observed the time limits fixed by law. For the cases mentioned under (b) and (c) above, and all cases relating to dismissals, the maximum periods within which recourse may be had to the labour court is fixed at fourteen days. For all other cases, it is three months. If the case has not previously been considered by the joint committee, the period is reckoned from the date on which the claimant was injured. If it has been considered by the joint committee but no agreement has been reached, or if the decision of the committee has been set aside, the period is reckoned from the date on which the party concerned was officially notified of the cancellation of the decision or of the failure of the negotiations of the committee ¹.

The claimant is not required to submit a statement in writing to the labour court. A simple oral request is sufficient for the court to be officially seized of the case, provided that the necessary conditions have been fulfilled.

PROCEDURE

The parties may appear before the court in person or authorise a representative to take their place. They may also have the assistance of a lawyer of their choice. If the claimant or his representative fails to attend, the case is closed unless it relates to a criminal action, when the proceedings continue in the absence of the claimant. If the other party fails to attend before the court, the case is suspended and a summons is served on him. If he fails to appear a second time, the court may issue a warrant against him.

The labour court must consider a case referred to it within seven days. It gives its decision after having heard the statements of the two parties and after examining the documents of the case. The parties must be notified of its verdict within seventy-two hours. A copy of the verdict must be sent to the parties and to the Labour Prosecutor for the region and the Labour Prosecutor attached to the Supreme Court of the Federated State on whose territory it was given.

After the period during which an appeal may be made (within fourteen days of the date on which the parties are notified of the decision) has expired, the decision acquires the force of law and must be enforced. If, however, the court has adjudged to the worker a sum of money in cash not exceeding his monthly wage, he can immediately claim such sum, which must be paid to him by the employer on pain of prosecution. Even if the decision is reversed, the employer cannot claim the reimbursement of this sum. Furthermore, the labour court has the right to

¹ The labour court may decide that it has competence when the time limit has been exceeded for a valid reason. It is for the claimant to show proof of such validity, and the court alone has competence to accept it.

decide in each separate case that its decision shall be enforceable immediately, provided that the interests of the worker or his means of livelihood may be seriously affected by any delay in the enforcement.

APPEALS AND SUPERVISION

The responsibility for supervising the work of the labour courts is in the hands of the regional labour prosecutor. He has the right to appeal to the ordinary regional court for the setting aside of the decision of the labour court within fourteen days of such decision. The parties have a similar right to enter an appeal to the regional court within fourteen days.

In no case may an appeal be admitted if the sum of money involved does not exceed the monthly wage of the worker or the case relates to a punishment based on the rules of employment, provided that it does not also relate to the dismissal of the worker.

The regional court must decide within seven days. It may either simply reject the appeal, or close the case, or refer it back to the labour court for reconsideration. It may also give an award of its own, without referring the case back to the labour court for re-examination, whenever the facts of the case are sufficiently clear or it is simply a question of modifying the grounds of the award. The regional court decides also in all cases in which, after the case has been considered a second time by the labour court, the latter makes the same mistakes as before and fails to follow the indications given by the regional court. Any decision by the regional court, or by the labour court when dealing with the case for the second time (provided it follows the indications of the regional court), is final and no appeal against it is allowed. Nevertheless, the labour prosecutor may appeal within three months to the Supreme Court of the State in whose territory the labour court is situated for the cancellation of the verdict of the appeal court or a decision of the labour court after a second hearing of the case, if it is considered that the verdict or decision involves a serious attack on the law, or threatens the security of the State, or seriously prejudices the interests of the workers.

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ITALY

§ 1. — Historical Development

After the achievement of political unity in 1860 and the consequent unification of the customs and legal systems, the Government of the newly formed Italian Kingdom entered on a policy of promoting railway, road and harbour building and the development of means of communication in general. This marked the beginning of a period of national prosperity.

In agriculture more intensive methods of cultivation were adopted as soon as the prejudices arising out of reliance on the natural fertility of the Italian soil had been overcome, land drainage schemes were inaugurated and public services improved. The result was a revival of grain-growing and animal husbandry and an extension of afforestation, vine growing, etc.

Once the stage of small handicraft undertakings had been passed, industry too expanded under the protection of import duties, and production rose until it was not only sufficient to supply most of the requirements of the home market, but even provided a steadily increasing balance for export.

During this period of economic development¹, which was accompanied by a general rise in the standard of culture and a keen intellectual revival, the Italian trade union movement was born and grew²; and with it the need for a solution of the problems raised by labour conflicts and their avoidance became more and more real and urgent.

A growing strike movement, particularly noticeable between 1890 and 1900, which also affected agriculture, gave rise comparatively early to consideration of the possibility of conciliation and arbitration procedure in Italy, and attempts were made in three different fields — legislation, trade union policy, and administration — to find a just and satisfactory means

¹ Cf. B. CROCE : *Storia d'Italia dal 1871 al 1915*, pp. 53, 62 and 234 et seq. Bari, 1928.

² For details cf. *Freedom of Association*, Vol. IV, pp. 1 et seq.

of settling class differences, preventing the spread of large-scale conflicts, and making them less acute.

In legislation, the first step towards a conciliation and arbitration procedure was made when the Probiviral Courts Act of 15 June 1893 was passed. This Act, which owes its origin to the proposals of the Royal Committee on Strikes, was principally concerned with the settlement of disputes between individual employers and workers, and only section 8 dealt with collective disputes. It provided that application might be made to the conciliation board of the probiviral court to secure a peaceful settlement of disputes concerning "wages or hours of work agreed on or to be agreed on". The question whether this provision gave the probiviral courts the power to act as arbitration courts in collective disputes, with the consent of the parties, remained undecided¹, and was in any case not of great practical importance, since Italian legislation provided no penalties should one of the parties refuse to attend the conciliation proceedings. On the other hand, there was nothing to prevent members of the probiviral court, if applied to, from undertaking the adjustment of a collective labour dispute by means of conciliation or arbitration, though here again the Act is not explicit.

It was obvious that this legislation was insufficient, and the need for a complete statutory regulation of the matter soon made itself felt. Among the many attempts in this direction, mention may be made of the Bill on contracts of employment introduced by the Ministers Cocco, Ortu and Baccelli in 1902, Mr. Cabrini's motion, which was discussed in Parliament on 16 March 1903, the proposals of the deputies Turati, Bissolati, Alessio, Nicolini, and Abbiate, and the Bill to reform the probiviral courts which was introduced in Parliament by the Ministers Cocco, Ortu and Orlando on 27 November 1909.

That all these pre-war attempts were fruitless is not to be put down to lack of understanding of social questions, for at the beginning of the century such understanding was in fact becoming widespread; it is rather an indication that there was no real need of special bodies and special procedure for conciliation and voluntary arbitration, seeing that the administrative authorities tried to prevent any outbreak of conflicts, and, if they were unsuccessful,

¹ This view is maintained by ABBIATE: *Riforme legislative per la soluzione dei conflitti fra capitale e lavoro* (Atti del Consiglio Superiore del Lavoro, XII. Session, 1908, p. 204); REDENTI: *Massimario della giurisprudenza dei Probiviri*, Rome, 1906, p. 17; while BALELLA: *Gli organi di conciliazione e giurisdizionali nelle vertenze collettive fra capitale e lavoro*, Rome, 1923, p. 114, is of the contrary opinion.

spared no pains in attempting by persuasion, mediation and the exercise of the necessary pressure to bring them to an end. Moreover, compulsory arbitration and other means of obligatory settlement were opposed to the Liberalism that then ruled ; and both employers and workers had more faith in the strength of their own organisations than in the decisions of an arbitration court, that is to say, of the impartial person appointed as chairman by the arbitrators.

The point of view of this period is well expressed by Mr. Giolitti, who regards it as the duty of Governments, in the case of social conflicts, to observe a neutrality largely benevolent towards the workers. In his own words :

In these struggles between capital and labour the only part the State can play which is likely to be successful and which is just to both parties is that of mediator and peacemaker.

In the case of a strike, one object only should oblige the State to intervene, namely, the protection of the right to work — which is just as sacred as the right to strike — when the strikers threaten the exercise of that right by others.

These principles were at first opposed, principally by agricultural employers, who were much incommoded by frequent strikes during the harvest, but they gradually won general acceptance and formed the basis of Government policy from 1901 until the beginning of the war.

However, strikes became more and more frequent, and, under the influence of revolutionary syndicalism, often took on a violent and political character, so that even before the beginning of the war a certain dissatisfaction began to make itself felt and the discussion on the expediency of the Government's Liberal policy revived.

The profound alteration in conditions occasioned by the war completed this change in the national attitude. The conviction that every interruption or limitation of production must be avoided, the recognition of the common task to be accomplished, and the danger which threatened the whole people awoke both in the masses and in the leaders of industry a realisation of the needs of the moment and the readiness to make the sacrifices called for.

This was the national mood when the Regulations of 22 August 1915, No. 1377, were issued. These made arbitration compulsory in all disputes on economic or disciplinary questions arising between the staff and the management of "auxiliary undertakings", that is, industrial undertakings which worked for war purposes

and were subject to the regulations concerning the mobilisation of industry. Since the number of these auxiliary undertakings grew steadily the longer the war lasted, the scope of the Regulations was constantly on the increase. It was also felt necessary to make some arrangement for those undertakings which were not subject to the special mobilisation regulations ; and for them a conciliation procedure for the settlement of collective labour conflicts and the adjustment of differences was introduced. At first this applied only to undertakings in the " war zone ", but it was extended later to all parts of the country and all branches of industry producing necessities of life or satisfying some important national economic need. Finally, it was decided that, in the case of disputes in undertakings not belonging to one of these industries and situated outside the war zone, the conciliation committees should have the power to act as arbitration courts if both parties made application to that effect.

The economic emergencies of the war period caused the legislative authorities to extend to agriculture the machinery for conciliation and arbitration to deal with collective disputes of every type.

Another legislative measure was passed before the end of the war, and remained in force after peace was declared. This was the Decree of 13 October 1918, No. 1672, which, before its expiry, was extended for an indefinite period by the Legislative Decree of 31 July 1921, No. 1098.

This Decree dealt with the composition of the new probiviral courts, and also extended the competence of both the old and the new courts to labour disputes (*controversie*) and labour conflicts (*conflitti*), which section II of the Decree defined as follows :

(a) Collective disputes which arise concerning the validity, interpretation, execution or termination of agreements or contracts of employment between a number of workers on the one hand and one or more industrial undertakings on the other ;

(b) Conflicts which arise concerning the alteration of agreements in force or the fixing of new conditions of employment between a number of workers on the one hand and one or more industrial undertakings on the other. . . .

The court was to begin its attempt at conciliation in such cases on application by one or both parties, or by the Prefect if the matter was confined to a single province, or the Ministry of Commerce, Industry and Labour if it extended to several provinces.

If the attempt was successful, the chairman recorded the fact in a minute of the proceedings, and the formula of conciliation

adopted had "contractual force to govern the relations between the parties, the minutes having the force of evidence" (section 16).

If, on the other hand, the attempt at conciliation failed, the court was required "to give its own judgment (*giudizio*) of the case, and indicate how the matter might be settled". This judgment was not, as the text might imply, simply an advisory opinion, but was, like the conciliation agreement, legally binding, for section 20 of the Act provided that "every contract, in which conditions of employment less favourable to the workers than those contained in the conciliation formula or in the judgment of the court are laid down, shall be null and void". Appeal against such judgments could be lodged with the Permanent Committee on Labour Questions (section 17), whose decision was final.

This was the first attempt made by the Italian legislative authorities to deal fundamentally with the question of the avoidance and settlement of labour disputes.

This legislation on conciliation and arbitration in industry was accompanied by a similar effort to settle collective disputes and conflicts in agriculture. Apart from the Order of 14 September 1919, No. 1726, the Royal Order of 12 November 1921, No. 1659, should be mentioned. This applied to the new provinces ceded to Italy at the end of the war (Venezia Giulia and Tridentina), and gave the conciliation committees attached to the provincial and district courts the power to make settlements in "collective disputes and conflicts in any way connected with agreements concerning agricultural labour", or, failing a settlement, exactly to establish the facts of the case and to issue a decision "in which the associations and persons to whom it applies, its period of validity . . . and the sanction or sanctions provided to ensure compliance should be mentioned".

On application by the parties or the administrative authorities, or on its own initiative, the conciliation committee might intervene at any moment in disputes or conflicts, "so long as the decision made was valid, and . . . extend its validity to associations or persons not originally covered by it". No legal remedy was provided against the decisions and instructions of the committee.

With the exception of the last, these provisions were extended to cover the whole country by the Legislative Decree of 2 February 1922, No. 35, which also transferred the duties of conciliation and arbitration in agriculture to the provincial committees provided for in the Order of 14 September 1919, No. 25, which consisted of a professional magistrate as chairman and two representatives of each of the parties to the dispute.

Before this review of legislation in the earlier period is closed, mention must be made of the special provisions for individual groups of workers, in particular the rice workers and the staffs of privately owned public transport undertakings.

The technical conditions obtaining in respect of health in the rice fields and the fact that large numbers of foreign workers are employed there in certain seasons made special legislation for this branch of industry necessary. The Act of 16 June 1907, No. 337, later incorporated as Chapter X in the unified Hygiene Regulations of 1 August 1907, No. 636, and the Regulations confirmed by the Order of 29 March 1908, No. 158, and later amended by the Order of 5 January 1911, No. 41, were therefore issued.

On the basis of these regulations a committee was set up in every commune or administrative district in which rice was cultivated, composed of equal numbers of representatives of employers and workers and presided over by an impartial person named by the parties or, failing agreement between them, by the magistrate (*pretore*). The committee was required to decide in individual and collective disputes concerning the interpretation, application and execution of contracts in force or prevailing customs, but not in labour conflicts.

Decisions arrived at unanimously by members of the committees had the legal force of arbitration awards, and the magistrate could require compliance with them. There were however but few such committees.

More importance attaches to the committees to ensure equitable treatment of the staffs of privately owned public transport undertakings (employees on tramways and light railways and inland navigation services).

Workers of this group were not permitted to strike, and it therefore seemed just to guarantee them equitable treatment. Provisions with this object in view were included in section 21 of the Act of 30 June 1906, No. 272, and later in a somewhat more systematic form in the Act of 14 July 1912, No. 835, the Order of 1 May 1913, No. 578, in pursuance of the above Act, the Decree of 25 March 1919, No. 467, the Order of 8 January 1920, etc.

A "Committee on Equitable Treatment" was set up at the Ministry of Public Works, composed of an Under-Secretary of State as chairman, several officials, and equal numbers of representatives of employers and workers. It was required to hear the spokesmen of the employers and workers and to give its opinion on questions affecting the treatment of the latter from the economic,

legal and disciplinary points of view. If the Minister consented to application of the decisions of this committee, such decisions received the force of law. Moreover, on the request of both parties, the committee might be entrusted with the arbitration of collective disputes ; but if such request was made by one party only, the committee could not do more than give its opinion as to the most equitable method of settling the case (Decree of 25 March 1919, No. 462).

This system of regulation according to equity remained in force for a number of years. The conditions of employment of these workers were regulated in accordance with the current state of the labour market and with the principles which governed conditions of employment on the great State railways. Nevertheless, though the system was still nominally in force, there were several strikes among this group of workers during the agitated period from 1919 to 1922.

After the Fascists had come into power the whole system was thoroughly reorganised in pursuance of the Legislative Decree of 19 October 1923, No. 2311. The legal position of these workers was regulated by an Order issued in connection with the Decree, the latter covering only the so-called benefit funds (sickness funds). *Economic conditions of employment were, however, to be fixed by agreement between the particular management concerned and two representatives of the staff, who were on the first occasion nominated by the Ministry of Public Works. If the attempt at conciliation failed, the case came before an arbitration court, which was required, in making a decision, to take into consideration " the local economic conditions, the financial position of the undertaking, the conditions of engagement and the demands made on the staff "*.

The arbitration committees were composed of representatives of the undertakings and of the staffs, the latter being appointed by the Ministry. The chairman was nominated by agreement between the parties or, failing this, by the president of the court of appeal. Mixed committees for several provinces, which were set up by the Minister, had to decide on individual disputes between employers and workers concerning the application of the principle of equity ; collective disputes, on the other hand, " which directly affected the staffs of several undertakings " were submitted to the Minister, who acted as friendly mediator and gave his decision after hearing the parties.

The Legislative Decree of 8 January 1931, No. 148, which was.

intended to bridge the gap between the above-mentioned Act and that on trade associations of 3 April 1926, No. 563 ¹, confirmed the regulation of the legal position of these workers and decided that economic conditions should be settled within a specified period by agreement between the associations on either side, or, failing this, by the labour courts.

At the end of this series of legislative measures which preceded the Act on trade associations, mention may be made of the Legislative Decree of 9 February 1919, No. 12, concerning the contracts of service of private employees, section 13 of which set up provisional joint committees attached to the Chambers of Commerce. These committees, on which employers and workers were represented in equal numbers, were required "to draft standard contracts for the various groups of undertakings and by these contracts also to limit the normal hours of work of the employees", and "to intervene in individual and collective disputes with the object of conciliating the parties and promoting an agreement between them for settling the dispute".

But this rather vague provision had not much practical effect, and it was therefore not incorporated in the new Decree on the contract of service of private employees of 13 November 1924, No. 1825.

Besides the legislation which has been reviewed, a number of labour conflicts, some of them of importance, were settled during this period by means of awards in accordance with civil procedure. The decisions given by the Minister Labriola in 1920 in the grave conflict in the electrical industry may be cited as an instance. Moreover, several important wage agreements which were concluded at that time (ships' engine-room staff, etc., iron workers, chemical workers, electricians) stipulated that all collective disputes and conflicts were to be submitted to arbitration.

A further fact should be noted. On several occasions during this period the Government exerted its authority to settle labour conflicts of which the whole country felt the effects. When a particularly serious conflict, the metal-workers' strike, which eventually led to an occupation of the factories, arose, certain general regulations to govern working relations were issued by the Prime Minister (Mr. Giolitti) in a Decree dated 19 September 1920. The Government was not empowered by statute to take this step, but in the exceptional circumstances it was completely successful.

¹ See below, p. 433.

§ 2. — The System in Force

GENERAL OBSERVATIONS

The advent of Fascism to power meant the overthrow of the doctrines of Liberalism, which until then had dominated policy. This change may be clearly seen in the terms of the Trade Associations Act passed in 1926 to complete and consolidate the political victory, in the Labour Charter, and in the supplementary laws. They provide a groundwork for the new relations between employers and workers. The Fascist attitude is that it is less important to create institutions to settle "inevitable" labour conflicts than to regulate conditions of work in such a way that no conflicts can occur.

Conciliation and arbitration in modern Italy are thus an important part of the whole Fascist system of labour law and can only be understood as such. A few short quotations from a work by one of Fascism's foremost theorists, Professor Rocco¹, the Minister of Justice, who is responsible for the above-mentioned Trade Associations Act, will serve to show the attitude of the movement towards labour disputes and their solution :

The Fascist State is the State which realises with a maximum of power and cohesion the ideal of all legally organised society. Society, according to the Fascist conception, is not merely the sum of a number of individuals but an entity with its own life, its own aims transcending those of individuals, and its own spiritual and historical value ; and the State, which is society as organised by law, is for Fascism something more than the citizens which compose it at a given moment, for it, too, has its own life and its own aims, higher than those of individuals, to which the individuals' aims must be subordinated. . . .

The Fascist State has its own moral code, its own religion, its own political mission in the world, its own functions for the furtherance of social justice, and its own economic task. It must therefore extend and intensify morality ; it must face religious problems, and profess and protect the true Catholic faith ; it must carry out in the world the civilising mission entrusted to the nations with high culture and great traditions, which means that it must strive with all its power to extend its political, economic and intellectual influence beyond its own frontiers ; *it must work for justice between classes and prevent any one class from immoderately defending its own interests* ; and finally, it must aim at increasing production and wealth, using the powerful spur of personal interest when it is of value, but intervening on its own initiative in case of need. . . .

¹ Rocco : *La trasformazione dello Stato. Dallo Stato liberale allo Stato fascista*, pp. 16 et seq. Rome, 1927.

The Fascist State is the truly sovereign State dominating all the existing forces in the country and bending them to its own will ; for if the aims of the State take precedence over those of its citizens, so too the means used to attain them must be more powerful than all other means, and the forces at the command of the State greater than any other force. . . .

The highest aims and the greatest force — these ideals contain the essence of the Fascist conception of the State ; and all the new Italian legislation tends to realise it.

In accordance with this conception, the preamble to the Trade Associations Bill declared that the Fascist State is “ the truly sovereign State dominating all the existing forces of the country and directing them towards realisation of the nation’s historical and imperative aims ”, and that it “ naturally . . . cannot ignore the most serious problem which is vexing the world to-day, that of the relations between capital and labour ; it must find a solution which tends to peaceful collaboration between social groups and to an ever-increasing revenue from national production ”.

The Fascist corporative organisation of society treats labour conflicts as class aggression and forbids them, just as the historical and legal development of the State has forbidden personal aggression.

The Fascist system of labour law, as embodied in the Trade Associations Act of 3 April 1926, No. 563¹, and in the Regulations for its administration of 1 July 1926, No. 1130², is built up on the four following principles :

- Legal recognition of the associations of employers and workers, with equality of rights, under the strictest State supervision ;
- Legal validity of collective agreements ;
- Judicial settlement of collective labour disputes by special labour courts ;
- Prohibition of direct class action (strikes and lock-outs) and sanctions in case of contravention.

The Fascist legal system has been discussed in detail in a previous publication of the International Labour Office³, and only the procedure of the labour courts and the provisions prohibiting strikes and lock-outs can be dealt with fully here. It must be assumed that the other characteristics of the system are familiar to the reader.

¹ *Legislative Series*, 1926, It. 2.

² *Ibid.*, It. 5.

³ *Freedom of Association*, Vol. IV, pp. 33 et seq.

Special legislation has been passed concerning dockers, and this, so far as it is relevant to the purposes of this study, is dealt with in Appendix I (see page 451).

CONCILIATION PROCEDURE

As has been pointed out, it is in the Fascist view less important to create special bodies for the settlement of collective conflicts than to build up a legal system making such conflicts impossible. It is consistent with this principle that the oft-mentioned and all-important Trade Associations Act of 3 April 1926 does not provide for special and exclusive conciliation and arbitration institutions. On the contrary, the recognised associations themselves, in their various grades¹, undertake the adjustment of disputes. It may even be held that this duty arises out of the obligation to conclude collective agreements which figures in section XI of the Labour Charter, where it is specifically stated that "it shall be the duty of trade associations to enter into collective agreements to govern the labour relations between the categories of employers and workers which they represent".

No definite regulations were framed for conciliation procedure, and these appear not to have been indispensable, for there are no proceedings before special institutions, but simply negotiations between the associations concerned. Rules of procedure will certainly have been formed by precedent, but nothing is explicitly prescribed.

It should be mentioned that, in 1927, on the recommendation of the secretary of the Fascist Party, a "Central Trade Associations Committee", with the party secretary as chairman, and corresponding provincial committees under the provincial party secretaries were formed. In case of economic or occupational collective disputes the provincial committees are empowered to undertake conciliation, or, with the explicit consent of both parties, to arbitrate. The powers and duties of the associations in respect of collective agreements, however, remain unaffected².

¹ The recognised associations are organised as follows: (a) local unions (*sindacati elementari*), (b) national federations (*federazioni nazionali di categoria*), (c) confederations (*confederazioni*).

² In a resolution adopted at its session of 9 September 1929, the Central Trade Associations Committee dealt with a proposal for the appointment and recognition of workers' delegates in factories and other undertakings, which it repudiated in theory and in practice; on the other hand, it recognised the need of facilitating as far as possible the immediate and effective intervention of the associations for the amicable settlement of individual and collective disputes which cannot be

The object of the conciliation and mediation of the associations in collective disputes arising out of conflicting interests is to bring about the conclusion of collective agreements. Section 50 of the Regulations of 1 July 1926 on the administration of the Associations Act¹ states that "the rules of the higher associations (federations and confederations) may provide that collective agreements concluded by the associations affiliated to the higher associations shall be previously authorised by the latter"; and as the higher associations often make use of this power, they acquire more and more influence from the conclusion of agreements, and therefore from the successful termination of the conciliation proceedings leading up to them. A circular (No. 1001) issued by the General Confederation of Industry (the oldest and most influential of these associations) on 19 July 1928 states :

The local unions are required to obtain the consent of the Confederation to collective agreements concluded by them. They must therefore communicate the proposed agreement to the competent federation, which will then submit it to the Confederation with any remarks which it may have to make. Every local dispute in respect of which conciliation fails is brought before the local unions; the Confederation is at the same time informed of the matter and "retains the right in

decided by direct negotiation between the parties. For this reason, it held that it would be advisable to decentralise as much as possible the conciliation procedure of the associations, and accordingly suggested that :

(1) If a group of undertakings or an industrial area is situated so far from the seat of the competent association of employers or workers, or there are so many undertakings in the group, that the usual representatives of the associations cannot intervene, the latter should by mutual agreement nominate one delegate each, and these delegates should then together try in individual disputes to bring about an amicable settlement that would have the force of law ;

(2) The delegates nominated by the associations should not attempt conciliation in disputes affecting undertakings with which they are themselves connected as employers or workers.

It should be remarked that these delegates have the same powers and duties as section 4 of the Administrative Regulations assigns to the associations in respect of individual disputes on labour questions. It follows that :

(a) From a legal point of view the delegates are merely mediators, that is to say, they have to attempt to bring about an amicable settlement of disputes between employers and workers ; in the minutes of the attempted conciliation, a copy of which is communicated to the associations, it is stated whether the attempt has been successful or not, and the parties sign with the delegates, especially when an agreement has been arrived at. Nevertheless, the delegates must use all their influence to induce the parties to accept the solution they propose ; but if the position taken up by the employers is in open opposition to the terms of the collective agreement or in any way contravenes the explicit instructions of the associations, the delegates must warn the employers and recommend to their organisation the steps which seem to suit the circumstances of the case and which they are competent to take.

(b) In the case of further legal disputes between the parties, this attempt at conciliation excludes any other intervention by the associations before the case has been judged.

¹ *Legislative Series*, 1926, It. 5.

each individual case to take a joint decision with the Confederation of Workers' Unions whether the two together shall give a direct award, or whether it shall instruct the national federation for the category concerned to get into touch with the competent federation of workers' unions for the purpose of making a settlement".

The corporations, too, have a variety of powers and duties in respect of the collective settlement of working relations and therefore of the adjustment of disputes¹.

The corporations have *inter alia* the following powers: "to intervene for purposes of conciliation in disputes which may arise between the bodies belonging to the corporation . . ." (section 44 of the Regulations); to "lay down general rules for conditions of employment in the undertakings which they cover", but only "subject to previous agreement with representatives of the employers and the workers. Such rules shall apply to all employers and to all workers of the category covered by the rules" (section 10 of the Act). If each of the associations belonging to it has given the necessary authorisation, it issues the rules "in conformity with the principles of equity, harmonising the interests of employers with those of workers and both with the higher interests of production" (section 56 of the Regulations).

The decision of a corporation in the case of a dispute on a labour question is given by the competent body after hearing both parties; the exact procedure is not further defined. There is no legal remedy against such decisions, but they may be rendered invalid by the conclusion of a collective agreement between the parties concerned. For this reason many writers consider that a corporation, in making such a decision, is acting in a legislative, rather than in an arbitral or judicial, capacity.

¹ Readers will know that the Fascist leaders originally intended to create a single occupational organisation, including both employers and workers, each grouped in their own associations; but the Trade Associations Act did not adopt this policy. Nevertheless, in section 3, paragraph 2, it states that "associations of employers and associations of workers may be united by means of central co-ordinating bodies with a common management . . ."; and section 42 of the Regulations for the administration of the Act declares that "the organisation thus united shall constitute a corporation".

The corporation is therefore a composite body above the associations; its members are not individuals but occupational organisations composed of persons who, though belonging not to the same but to opposing occupational groups, are engaged or employed in a single branch of production. The territorial scope of a corporation is the whole country. The associations composing it do not lose their independence, which they express chiefly in concluding collective agreements.

The corporations are above the parties to disputes; strictly, they have no legal personality but are State administrative organs (section 43 of the Regulations). The State does not, therefore, give them legal recognition, but establishes them and decrees their constitution. The president of a corporation is appointed and removed from office by the Minister of Corporations.

It must be borne in mind, however, that only one corporation, that for the theatrical profession, has as yet been founded, and that the duties prescribed for corporations in the Act have had to be undertaken in the majority of cases by other bodies. Section 33 of the Act of 20 March 1930, No. 206, entrusts these in general to the secretaries and under-secretaries of the National Council of Corporations ; but conciliation—the subject now under discussion—is, according to section 19 of the same Act, to be directly undertaken by the Ministry of Corporations.

In the absence of statistics it is difficult to obtain an exact idea of the activity of the associations, federations and confederations in respect of conciliation for the purpose of concluding collective agreements. The only certainty is that the confederations themselves undertake almost all cases of any importance, and are therefore in practice the organ of conciliation.

The work of the Ministry of Corporations can be more exactly gauged. Its conciliation activities for the purpose of concluding collective agreements covering more than one province have been extensive, as the following figures for the cases dealt with during the period 1 January to 30 September 1931 show :

	Number of cases
Industry	53
Agriculture	12
Commerce	23
Land transport	8
Banking	5
Shipping	1

The Ministry states that the attempts at conciliation were successful in all but three of these cases.

When conciliation leads to the conclusion of a collective agreement, the conciliation formula naturally has the contractual force of such an agreement. The legislative provisions concerning the observance of collective agreements therefore call for brief consideration.

First of all (section 54 of the Regulations), “ individual contracts of employment concluded by individual employers and workers covered by the collective agreement shall conform to the rules laid down in the latter. Any clauses of individual contracts of employment (whether prior or subsequent to the collective agreement) which differ from the clauses of the collective agreement shall be automatically replaced by those of the collective agreement unless they are more favourable to the workers. Collective agreements shall have the same precedence over rules of employment”.

Collective agreements thus bind employers and workers whether they will or no.

Section 10 of the Act provides sanctions in the case of non-fulfilment of agreements by establishing, in accordance with the general principles of the law on contracts, liability at civil law, not only to the other party (employers or workers), but to each of the two associations which concluded the agreement.

Section 55 of the Regulations states that not only the person who has failed to observe an agreement but also the association representing him is liable for damages

- (a) if the association was itself a signatory to the agreement ;
- (b) if it has guaranteed the carrying out of the agreement ;
- (c) if it has not taken all steps in its power to enforce fulfilment by persons bound by the agreement, whether its members or not ; in respect of its members it is bound to exercise the disciplinary powers conferred on it by the rules.

Besides this exceptional civil liability, a later Decree, that of 26 February 1928, No. 471, provides for penal sanctions, for, according to section 26, " employers or workers who wilfully fail to carry out the provisions of a collective agreement or any rules issued by corporative organs shall be liable to a fine of not less than 100 nor more than 5,000 lire. . . . The engagement of employees on conditions inferior to those prescribed by the collective agreement shall constitute failure to carry out the agreement within the meaning of the preceding paragraph. " ¹

In order to be able to fulfil their obligations, the associations annually set aside a fixed proportion of their income to constitute a guarantee fund. This money must be invested in public debt securities. The fund also covers the associations' liabilities arising out of any contravention of collective agreements.

To provide a further safeguard for the observance of collective agreements, section 71 of the Regulations lays down that " actions relating to disputes with respect to the application of collective agreements and other existing rules can be brought against the legally recognised association representing the employers or

¹ Both in jurisprudence and in legal practice there is some difference of opinion as to what should be understood as " wilful non-fulfilment " ; the matter was not cleared up by the issue of the new Penal Code on 1 July 1931, for the provision quoted above is in the main taken over into section 509 of the Code, though the word " wilfully " is omitted. But since the Code regards such non-fulfilment as an offence, it must presume that it is wilful.

workers who are covered by the agreement and are bound to carry it out".

In accordance with instructions from the Ministry, the corporative inspectors, on discovering a case of contravention of a collective agreement which the employer has not remedied, are required to communicate the results of their enquiry to the associations concerned in order that the latter may make a further investigation, draw their own conclusions, and use their powers of protection and direction in respect of the persons they represent.

JUDICIAL SETTLEMENT OF COLLECTIVE LABOUR DISPUTES

As was pointed out in the International Labour Office study *Freedom of Association*, the Fascist legal system, which seeks to control collective working relation through the medium of the recognised trade associations, logically required the establishment of a system of labour courts. It was explained that in executing the high duties entrusted to it by legislation, the State could not remain aloof from the enforcement of the principles laid down. As the supreme regulator of production — for conditions of employment are in the last resort fixed by agents responsible to the State — it could not leave the solution of labour disputes to conciliation and arbitration bodies set up by the interested parties themselves, but had to call them before its own courts ¹.

Section 13 of the Trade Associations Act declares that "all disputes arising out of the regulation of collective working relations which are concerned with the carrying out of collective agreements or other regulations in existence or with demands for new conditions of employment" shall be within the jurisdiction of the labour courts.

There are thus two types of dispute :

- (a) individual and collective disputes of a legal nature arising out of the interpretation and application of agreements ;
- (b) economic disputes concerning the fixing of conditions of employment, following on failure by the associations to agree on the terms of an agreement.

With regard to the latter — the only type which concerns this study — it should first of all be noted that before bringing a case before the labour court in accordance with section 17 of

¹ For further details cf. *Freedom of Association*, Vol. IV, pp. 70 et seq.

the Trade Associations Act and section X of the Labour Charter, an attempt must have been made to arrive at an amicable settlement of the dispute, by means of the conciliation procedure described above. If the attempt fails, a special department of the court of appeal acts as the labour judicial authority. It is composed of a chief of section of the court of appeal as chairman, two legal counsellors of the court, and two citizens expert in problems of production and labour chosen by the chairman on each occasion from a special register kept for the purpose. By this appointment of high legal officials sufficient experience and efficiency is secured, and provision is also made for their assistance by experts, who act not simply as advisers but as full members of the court.

The Act states that "actions relating to disputes arising from collective relations connected with employment shall be brought exclusively by legally recognised associations . . . against legally recognised associations where such exist"; that is to say, only an association desiring to protect the interests of its occupational group may be party to such a case. "In other cases they shall be brought against a special commissioner appointed by the president of the court of appeal." In this case, and only in this case, "the voluntary intervention of individuals concerned shall be allowed" (section 17).

The subject of the dispute is the conditions of employment in a certain occupation; the decision therefore applies not only to the parties directly concerned but to the whole occupation, and must be taken not in the narrow sense but as a standard. This is a profound innovation in Italian law.

Section 68 of the Regulations permits the public prosecutor to bring actions "if necessary in the public interest In this case the trade association concerned may intervene in the proceedings."

Further, the Regulations contain exact provisions on procedure, the more important of which call for mention here. At the first hearing "if the parties persist in the dispute, the president shall in the first place endeavour to persuade them to conclude an amicable settlement. This endeavour shall be renewed during the case whenever an opportunity therefor occurs. If an amicable settlement is reached, a note thereof shall be made in the minutes and shall take the place of a collective agreement" (section 80).

The taking of evidence on the financial position of the undertaking and on costs of production are limited in certain respects by the Regulations, for except with the consent of the parties,

such evidence " shall not be given otherwise than by means of documents produced by the parties or published, or by means of the cross-examination of the parties, an enquiry on the spot, or the evidence of expert citizens not belonging to the undertaking " (section 83).

When the evidence has been taken and the parties and the public prosecutor have been heard, the court issues its decision, which, unlike most other decisions, is not only an interpretation of the law, but itself constitutes law. Whereas in ordinary cases the court " shall issue decisions in conformity with the laws and agreements respecting the interpretation and carrying out of contracts ", in case of the fixing of new conditions of employment it shall do so " in conformity with the principles of equity, adjusting the interests of employers and the interests of the employees, and in each case having regard to the superior interests of production.

" When new conditions of employment are fixed, the period for which they are to remain in force shall always be prescribed ; it shall as a rule be the period customarily fixed in contracts freely concluded " (section 16 of the Act).

The decisions apply to all the persons concerned, and like collective agreements are published in the official gazette of the province or in the *Gazzetta Ufficiale*.

No appeal is allowed against the substance of a decision, but faulty decisions due to errors or to chicanery on the part of the court may be revoked, and decisions issued in violation of the Civil Procedure Code or vitiated by a legal error may be annulled. In either case the appeal must be lodged within a fortnight.

Further, section 89 of the Regulations prescribes a legal remedy of a sort with which the Italian procedure is unfamiliar, namely, review of the decision on application by the party concerned or the public prosecutor if a considerable change in the circumstances of the case has taken place.

The enforcement of decisions is secured by Chapter III of the Trade Associations Act, which declares the provisions of the ordinary law respecting civil liability for failure to comply with a decision or respecting the execution of legal decisions to be applicable, and, further, renders any person who refuses or neglects to carry out the decision of a labour court liable to detention for up to one year and a fine of 500 to 5,000 lire. If the person concerned has a responsible position, the penalties are increased, detention in this case ranging from six months to two years and the fine

from 2,000 to 10,000 lire, and include removal from office. Section 509 of the new Penal Code is similar, but prescribes up to one year's detention and a fine of up to 10,000 lire.

Disputes concerning the collective regulation of conditions of employment may also be brought before an arbitration court, in which case the Civil Procedure Code applies. Arbitration must thus observe a fixed procedure, which is a break with former practice. Private arrangements to bring future individual disputes before an arbitration court (the "compromise clause") are declared invalid by section 3 of the Decree of 26 February 1928, No. 471, which states that clauses in collective agreements by which it is provided that such disputes "shall in any way be withdrawn from the competence of the judicial authorities" are null and void ¹.

In contrast with the purely judicial decisions, arbitration awards must be filed at the Ministry or prefecture — and not, as section 24 of the Civil Procedure Code prescribes, at the magistrates' office — and published (section 51 of the Regulations), i.e. they must be confirmed by the administrative authorities.

Up to date, the number of disputes brought before the labour courts has naturally been very small, for in the great majority of cases the authority of the associations in their different grades, and still more that of the Ministry of Corporations, has been sufficient to bring about conciliation. It remains to be seen whether this will still be so in the future.

It is well known that in several quarters there is a demand that the members of trade associations should be allowed a greater share in their management. This is advocated especially by representatives of the pre-Fascist trade union movement, though they have in principle become reconciled to the legally recognised unitary associations; but many of the principal spokesmen of the Fascist movement are also in favour of the election of the leaders of associations by their members ². A short while ago an official instruction intimated that, according to the new rules of the workers' unions in industry, agriculture, commerce and banking, which have already received the consent of the Central Committee,

¹ BONORA : *L'arbitrato nelle controversie collettive del lavoro*; Rome, 1927.
PERGOLES : *Diritto processuale del lavoro*, Vol. I, p. 273; Rome, 1927.

² This body of opinion, which is represented by the Milan monthly *I problemi del lavoro*, is in favour of the separation of the associations from the Fascist Party, the admission to them of all persons fulfilling the general conditions, the free election of all leaders by the whole body of members, and the direct participation of the latter in all decisions affecting them.

posts in the organisations are in future to be filled by election so that " the desire of the occupational groups for representation may be made compatible with the political requirements of the system ".

The influence of the members on the policy of the associations will be increased by the election of the leaders, who have hitherto been appointed, and this will perhaps tend to diminish the possibility of amicable settlements of collective disputes, and thereby to increase the activity of the labour courts.

Certain of the cases dealt with up to the present by the labour courts are of particular interest in respect both of the subject at issue and of their difficulty. The most important are outlined in Appendix II (see page 454) ¹.

PROHIBITION OF STRIKES AND LOCK-OUTS

As has been said, both the observance of collective agreements that are the outcome of conciliation proceedings and the execution of the decisions of the labour courts in collective disputes, which have the force of a collective agreement, are directly and extensively safeguarded by civil and penal sanctions. There is a further important indirect safeguard for the whole procedure for the adjustment of collective disputes and the resulting collective agreements or decisions of the labour courts; it lies in the prohibition of strikes and lock-outs under Fascist law, and the provisions in question should therefore be briefly considered ².

Once collective working relations were legally regulated, the legislature was of the opinion that strikes and lock-outs had no longer any object, and for this reason the Trade Associations Act prohibits under severe penalties all arbitrary direct action which may endanger production. Strikes and lock-outs are not directly punishable as such, but only when they occur without sufficient reason and for the purpose of obtaining changes in existing contracts of employment (economic strikes and lock-outs). A strike is deemed to have occurred when " three or more wage-earning or salaried employees, in pursuance of a previous agreement, cease work or perform their work in such a manner as to interfere with the continuity or regularity of the work in the undertaking".

Strikes are punishable with fines of 100 to 1,000 lire, lock-outs

¹ Cf. also the interesting first decision given by the Rome Court, an analysis of which may be found in *Freedom of Association*, Vol. IV, pp. 87 et seq.

² For further particulars, see also *ibid.*, pp. 83 et seq.

with fines of 10,000 to 100,000 lire ; and the " leaders, instigators and organisers " are liable to detention for one to two years (section 18 of the Act).

Still heavier penalties are reserved for the staff of public utility undertakings who strike, and for employers and workers who attempt by a lock-out or strike to " coerce or influence the decisions of a State, provincial, or communal body or authority or of a public official " (political strikes) (sections 20 and 21).

The question has been raised whether the penal provisions of the Act can apply only in cases in which a collective agreement exists. But the Court of Cassation as supreme court has decided (award of 28 March 1930, reproduced in *Massimario di Giurisprudenza del Lavoro*, October 1931, p. 555) that the suspension or cessation of work is also punishable when no collective agreement exists.

The difference between political and economic strikes and lock-outs must be sought in the motives leading up to them (award of the Court of Cassation of 10 June 1931, in *Massimario*, July 1931, p. 384) : thus a strike of milkmen, who had suspended the sale of milk as a protest against the instructions of the authorities, was declared to be political (Court of Cassation, 28 February 1930, in *Massimario*, June 1930, p. 312), as also the lock-out declared by the butchers of a certain commune, who shut their shops and laid in no new stocks as a protest against a price fixed by the authorities (Court of Cassation, 22 January 1930, in *Massimario*, p. 610), and the strike of the cabmen of a city as a demonstration of refusal to accept an order of the Podesta (Court of Cassation, 8 February 1929, in *Massimario*, May 1929, p. 262)¹.

On the other hand, the courts do not usually regard a strike called for legitimate reasons as punishable. The following strikes were thus declared permissible :

- (a) against an employer who had been in arrears with wages for a long period (Padua Court of First Instance, 14 February 1929 ; Castello magistracy, 13 December 1929)² ;
- (b) against an employer who refused to fix wage rates (Dolo magistracy, 30 October 1929) ;
- (c) as protest against arbitrary reductions of wages by an employer (Mede magistracy, 2 January 1929) ;

¹ Reproduced in INTERNATIONAL LABOUR OFFICE : *International Survey of Legal Decisions on Labour Law*, 1929, Italy, No. 15.

² *Ibid.*, 1930, Italy, No. 18.

- (d) to compel an employer to dismiss certain printers' foremen who had ill-treated the workers under them (Montebelluna magistracy, 21 February 1931) ;
- (e) to secure fulfilment of a contract of employment (Castelfranco Veneto magistracy, 30 July 1930) (but the contrary was decided by the Salerno Court, 22 March 1930) ;
- (f) due to the refusal of the employer to meet the workers' demands, which was interpreted as a dismissal (Viterbo Court, 23 August 1929) ¹.

Similarly, delay by workers in resuming work until the conclusion of negotiations between a deputation from them and the management of the undertaking concerning a notified reduction of wages (Abbiategrasso Court, 28 November 1928) was not considered as a punishable strike.

The courts have regularly decided that no punishable strike has occurred if the workers have simply notified their intention to cease work without actually doing so, and that no lock-out has occurred if the employer has then suspended work (Racconigi magistracy, 11 May 1929).

The new Penal Code, which came into force on 1 July 1931, revises the penalties as follows :

Section 502 declares a strike for the purpose of obtaining or preventing an alteration in the terms or application of existing contracts or customs to be punishable ; the penalties for lock-outs are higher, though not so high as under the Trade Associations Act ². Section 503 provides penalties for political strikes and lock-outs, section 504 increases the penalties for strikes and lock-outs intended " to force a public authority to take, or refrain from taking, official action or to influence its decisions ", section 505 provides similar penalties for sympathetic or " protest " strikes, section 506 provides penalties for lock-outs in small industrial and commercial undertakings, section 507 for boycotting, section 508 for entering or occupying agricultural or industrial undertakings by force and for acts of sabotage, and section 509 for the non-fulfilment of the provisions of labour legislation or the decisions of the labour courts.

¹ *Ibid.*, 1930, Italy, No. 19.

² The amended text omits the criterion of " previous agreement " ; joint cessation of work therefore suffices to constitute a strike.

§ 3. — Statistical Data

The following tables give a general view of the strikes which occurred between 1880 and 1926 inclusive. The data for lock-outs can only be given for the years 1880-1907 and 1920-1923, since the Italian Statistical Yearbook does not contain figures for the other years.

STRIKES, 1880-1907

Year	Total number of strikes	Number of strikes to which the figures in the next two columns apply	Number of strikers	Number of working days lost
1880 . . .	27	26	4,011	91,899
1881 . . .	44	39	5,900	95,578
1882 . . .	47	45	8,272	25,119
1883 . . .	73	67	5,854	111,697
1884 . . .	81	81	12,900	149,215
1885 . . .	89	86	23,967	244,293
1886 . . .	96	96	34,160	56,772
1887 . . .	69	68	16,951	218,612
1888 . . .	101	99	25,027	191,204
1889 . . .	126	125	28,974	215,880
1890 . . .	139	133	23,322	167,657
1891 . . .	132	128	38,402	258,059
1892 . . .	119	117	34,733	216,907
1893 . . .	131	127	30,800	234,323
1894 . . .	109	104	32,109	323,261
1895 . . .	126	126	27,595	125,968
1896 . . .	210	210	19,307	1,152,503
1897 . . .	217	217	96,051	1,113,535
1898 . . .	256	256	35,705	239,292
1899 . . .	259	259	43,194	231,590
1900 . . .	383	383	80,858	493,093
1901 . . .	1,042	1,042	196,540	2,146,184
1902 . . .	810	810	197,514	2,539,331
1903 . . .	549	549	109,327	1,539,298
1904 . . .	631	630	118,356	—
1905 . . .	552	448	74,635	—
1906 . . .	1,220	880	209,898	—
1907 . . .	2,054	1,556	271,666	—

LOCK-OUTS, 1880-1907

Year	Total number of lock-outs	Number of lock-outs to which the figures in the next two columns apply	Number of workers locked out	Number of working days lost
1880 . . .	2	2	31	31
1881 . . .	4	4	404	4,030
1882 . . .	2	2	84	534
1883 . . .	1	1	5	10
1884 . . .	4	3	55	459
1885 . . .	3	3	590	6,800
1886 . . .	1	1	70	—
1887 . . .	1	1	60	120
1888 . . .	1	1	70	490
1889 . . .	3	3	101	362
1890 . . .	5	5	3,110	7,485
1891 . . .	8	7	1,064	1,331
1892 . . .	—	—	—	—
1893 . . .	5	5	257	1,938
1894 . . .	11	11	1,526	37,419
1895 . . .	7	7	3,611	73,763
1896 . . .	6	6	2,267	18,243
1897 . . .	14	9	3,684	54,350
1898 . . .	18	18	2,920	3,434
1899 . . .	11	8	628	4,215
1900 . . .	14	9	1,508	6,190
1901 . . .	30	30	10,828	55,321
1902 . . .	22	22	6,283	25,956
1903 . . .	21	21	4,283	60,152
1904 . . .	7	6	1,655	17,683
1905 . . .	17	16	10,089	—
1906 . . .	3	3	878	—
1907 . . .	8	6	3,217	—

STRIKES IN INDUSTRY AND AGRICULTURE, 1908-1926

Year	Number of strikes		Number of strikers		Number of working days lost	
	Industry	Agriculture	Industry	Agriculture	Industry	Agriculture
1908	1,459	286	197,958	173,425	2,274,301	—
1909	930	132	140,452	46,569	1,678,118	—
1910	1,021	97	172,969	25,805	3,019,324	—
1911	1,107	148	252,853	132,738	2,623,307	—
1912	914	176	144,124	95,841	2,077,721	—
1913	810	97	384,725	79,842	3,978,333	—
1914	782	123	173,103	43,819	2,175,749	—
1915	539	69	132,136	47,508	—	—
1916	516	61	123,616	14,892	737,385	100,570
1917	443	27	168,626	6,191	831,227	18,217
1918	303	10	158,036	675	906,471	3,270
1919	1,663	208	1,049,438	505,128	18,887,917	7,436,829
1920	1,881	189	1,267,953	1,045,732	16,398,227	14,176,991
1921	1,045	89	644,564	79,298	7,772,870	407,393
1922	552	23	422,773	25,146	6,586,235	330,679
1923	200	1	66,103	110	295,929	540
1924	355	6	162,488	2,728	—	—
1925	—	—	304,551	2,693	—	—
1926 :						
1 January	—	—	23,279	16	—	—
—30 June	—	—				

LOCK-OUTS IN INDUSTRY, 1920-1923

Year	Number of lock-outs	Number of workers locked out	Number of working days lost
1920	16	18,113	211,332
1921	66	60,279	782,339
1922	37	18,829	378,207
1923	14	7,145	151,508

Since the second half of 1926, that is to say, since the Trade Associations Act has been in force, strikes and lock-outs have been forbidden and are therefore, as mentioned above, contraventions of the law. The following tables show the number of cases in which this prohibition was defied and the number of persons prosecuted for such contravention.

Year	Strikes		Lock-outs	
	Number	Number of persons prosecuted	Number	Number of persons prosecuted
1926 : 1 July-31 Dec.	46	677	3	14
1927	154	18,633	15	27
1928	69	2,964	8	35
1929	74	3,222	9	30
1930	75	2,830	7	33

No statistics are available concerning the results of these proceedings.

The legally recognised associations in all their various grades are so important in Italy for the regulation of collective working relations and the settlement of disputes that the official membership figures published by the Ministry of Corporations on 31 December 1930 are reproduced below.

The National Confederation of Fascist Unions of Artists and Members of the Liberal Professions, with 1,028 affiliated organisations and 92,426 members, and the Independent Fascist National Federation of Handicraftsmen's Unions, having 170,671 members and representing 474,649 handicraftsmen, are not included, only the more interesting figures for the six employers' and six workers' confederations (all based on the official data) being reproduced here.

EMPLOYERS

General Fascist Confederation of Italian Industry

Number of affiliated associations	169
Number of undertakings represented	125,266
Number of members	75,403

Fascist National Agricultural Confederation

Number of affiliated associations	365
Number of persons represented	2,818,238
Number of members	492,489

Fascist National Commercial Confederation

Number of affiliated associations	104
Number of firms represented	866,795
Number of members	454,088

Fascist National Confederation of Land Transport and Inland Navigation Undertakings

Number of affiliated associations	19
Number of undertakings represented	49,842
Number of members	18,802

General Fascist Confederation of Banking Undertakings

Number of affiliated associations	9
Number of undertakings represented	3,998
Managorial staff represented	6,376
Number of members (undertakings)	3,009
Number of members (managorial staff)	5,201

National Fascist Confederation of Shipping and Air Transport Undertakings

Number of affiliated associations	14
Number of undertakings represented	1,321
Number of members	884

WORKERS

National Confederation of Fascist Industrial Workers' Unions

Number of affiliated unions	2,401
Number of workers represented	2,815,228
Number of members	1,632,608

National Confederation of Fascist Agricultural Workers' Unions

Number of affiliated unions	419
Number of workers represented	2,945,690
Number of members	1,322,700

National Confederation of Fascist Commercial Employees' Unions

Number of affiliated unions	577
Number of employees represented	568,612
Number of members	287,485

National Confederation of Fascist Land Transport and Inland Navigation Workers' Unions

Number of affiliated unions	129
Number of workers represented	225,000
Number of members	190,226

National Confederation of Fascist Bank Employees' Unions

Number of affiliated unions	21
Number of employees represented	34,528
Number of members	20,315

National Confederation of Fascist Seamen's and Airmen's Unions

Number of affiliated unions	3
Number of seamen represented	123,353
Number of airmen represented	1,230
Number of members { seamen	14,648
airmen	557

The Trade Associations Act has thus created an inclusive organisation which now covers the whole field of national production.

The costs of the system — that is to say, the total contributions — amounted to 258 million lire in 1929 and 281 million lire in 1930. In 1931, on the other hand, they seem to have fallen considerably. Under the Act 28 per cent. of the contributions are appropriated to special purposes — the formation of a guarantee fund, the payment of the costs of the Ministry of Corporations, and above all the support of the National *Balilla* Organisation, the National Welfare Institution, and the National Board for Maternity and Child Welfare.

The contributions paid to the national confederations and the affiliated associations amounted in all to 205 million lire in 1930, made up as follows :

	Employers (in thousands of lire)	Workers (of lire)
Agricultural organisations	46,347	8,000
Industrial organisations	58,825	28,828
Commercial organisations	27,303	6,410
Land transport and inland navigation organisations	4,823	3,900
Maritime shipping and air transport organisations	1,750	1,993
Banking organisations	4,114	1,440
Organisations of artists and members of the liberal professions		5,016
Handicraftsmen's organisations		5,786

§ 4. — Summary

The Italian conciliation and arbitration system is an important and logically essential part of the whole Fascist legal and constitutional organisation, and can only be properly understood as such. One of the principal tasks which Fascism has set itself is that of creating a collective legal regulation of the relations between employers and workers by means of the officially recognised associations. These — from the lowest grade, the local unions, to the highest, the national confederations — must, therefore be the first to attempt to bring disputes arising out of the settlement of conditions of employment to an amicable solution and to work for the conclusion of collective agreements. Apart from the various

grades of the associations, there are no special institutions for conciliation, and the procedure as such is not specifically regulated, but may be adapted to practical needs. Until corporations are formed to act as connecting links between the employers' and workers' associations, the Ministry of Corporations is the supreme conciliation authority. If this Ministry also fails to bring about agreement in a dispute, the court of appeal acting as a labour court settles it by issuing an award with the force of law, unless the final attempt at conciliation to be made before this tribunal is successful.

The object of conciliation, and the outcome if carried out in compliance with the provisions of the law, is the conclusion of collective agreements, decisions by the labour courts being assimilated to such agreements.

Collective agreements and decisions of the labour courts have the force of public law in the Fascist system ; their execution is enforced by civil and penal sanctions. It follows logically from the principle of Fascism that strikes and lock-outs, which are direct class action, are prohibited. This prohibition in turn brings indirect pressure to bear on the parties to come to an agreement, and to observe the collective agreement concluded or the decision of the labour court as the case may be.

In practice, almost all collective agreements up to date have been settled by conciliation, and the labour courts have only had to intervene in a very few particularly difficult and important cases.

It is apparently the object of the Government to permit the exercise of more influence by the members of the associations in the selection of their leaders, and this may perhaps react unfavourably on the possibility of reaching agreements in collective disputes simply by means of negotiation between the associations, and so entail a more frequent use of the machinery of the labour courts in the future.

APPENDIX I

Work in Ports

The distinctive nature of work in ports and the needs arising out of it have led to the passing of special legislation, which is of interest not only from the administrative and economic but also from the sociological point of view.

The Decree of 15 October 1923 empowered the Commissioner for the mercantile marine services (whose post was later merged with that of the Minister of Communications), after consulting the Minister of National Economy, to limit the number of workers and undertakings in ports, to order the entry of workers in special registers, to regulate the distribution of the workers among the various employers, and to prescribe wage scales and hours of work for work in ports of a public utility character. An exception was allowed in the case of Genoa, where the local Independent Commission was to remain competent.

A further Decree of 1 February 1925, No. 232, authorised the Minister of Communications to set up dock labour offices attached to the harbour authorities or harbour offices to perform the above duties and certain others. For instance they are to "settle without judicial formalities any individual disputes which may arise among the workers or between workers and employers with respect either to the performance of the work or to the application of the wage scales" (section 2 (e)).

Section 3 states :

The dock labour offices shall also be responsible for examining applications or proposals submitted by the working classes or persons engaged in commerce respecting the organisation and remuneration of work, and shall give their opinion thereon with reasons. The results of the examination and of the opinion of the dock labour office shall be submitted to the harbour-master, who shall refer them to the Minister of Communications for his decision.

The Minister of Communications may also entrust the amicable settlement of collective disputes to joint committees, in conformity with the provisions of the regulations in force in each port.

Breaches of discipline, contraventions of wage scales or of the provisions issued by the dock labour offices are punishable by fines, suspension from work, or removal from the registers (for workers), and fines, or suspension or withdrawal of the right to undertake work (for employers). These penalties are imposed by the administrative authorities ; the proceeds of the fines accrue to a special fund intended solely for the payment of bonuses and grants to the workers (section 6).

The Decree of 23 October 1927, No. 2162, empowers the shipping commissioners (*Direttori Marittimi*) temporarily to suspend the application of the proposals of the dock labour offices or of the harbour authorities concerning wages, on condition that they undertake to make immediate application to the Ministry for a final decision.

The Act of 31 December 1928, No. 3056, empowers the shipping commissioners to fix the maximum staff to be employed in the various port services.

The Legislative Decree of 24 January 1929, No. 166, states that on the instructions of the administrative authorities responsible for seamen, dockers shall be organised in societies ; these take over the property of the workers' unions in whose place they are created, and have limited legal personality, that is to say, only so far as the loading, unloading, trans-shipment, storage, and other handling of goods are concerned. In this way the old voluntary, free, democratically organised unions, several of which often existed for the same category of workers, have been suppressed and a unitary body of a compulsory character and authoritative organisation has taken their place.

The heads of the societies are consuls appointed by the authorities after the members of the unions have submitted non-binding suggestions. Their duties include administration of the property and income of the society, under the supervision of the authorities and in accordance

with the regulations drafted by the authority responsible for seamen after hearing the opinion of the union concerned.

These are, in short, the general provisions concerning work in ports. On the basis thus provided, charges and wage rates have been fixed for the various Italian ports, among the latest examples of such regulations being the Ministerial Decree of 24 June 1930 concerning the port of Syracuse (*Gazzetta Ufficiale*, No. 161, 1930).

The need of maintaining smooth and efficient service in ports and of getting rid of old abuses has thus given rise to a regulation of labour conditions that has been steadily extended as time went on, and has led to the present position in which wages and conditions of employment are fixed by the authorities.

As part of the same scheme special regulations were issued for each of the larger ports (Genoa, Naples, Venice).

When the port of Genoa was declared administratively and economically independent (Act of 12 February 1903, No. 50), the Independent Commission which was made responsible for administration was also required to draw up regulations and rules of discipline to cover every form of activity of persons employed in the port. Representatives of the employers and workers were therefore given seats on the Commission.

The Commission issued special regulations for work in the port, in the form of closed lists of workers (the work had previously been the sole right of the porters of the customs office, known as the "Caravan") and wage scales. A later Decree, that of 28 December 1924, No. 2285, gives the chairman of the Commission, as representative of the Government, more extensive administrative powers, upon which he can rely whenever necessary for the smooth and efficient working of the port services. In case of exceptional public need, he is entitled to call for the support of the employers and workers, and refusal may be punished with the penalties provided in section 408 of the Mercantile Marine Code, which deals with the refusal of seamen to obey the orders of the competent authority to come to the rescue of a ship in distress, to take part in fire-fighting work, etc.

Moreover, section 34 states that the orders to be issued by the Commission may prescribe the following penalties for breaches of discipline and contravention of the rules governing work in the port and other provisions :

For individual workers :

- (a) a fine not exceeding 500 lire ;
- (b) suspension from work for not more than sixty days ;
- (c) degradation from the status of a permanently employed worker to that of a casual worker ;
- (d) removal from the register.

For workers' organisations and employers :

- (a) a fine not exceeding 2,000 lire ;
- (b) suspension of the right to undertake work, for not more than thirty days ;
- (c) withdrawal of the licence for work in the port.

These penalties are imposed by the administrative authority, and the proceeds of the fines accrue to a special fund for the benefit of the dockers.

The same Decree requires the chairman of the Commission to settle those disputes within the competence of the magistrate (i.e. involving sums of not more than 5,000 lire) which arise in connection with such labour, business, or service inside the harbour as the Commission is

competent to deal with. In cases involving larger sums, the chairman attempts mediation only. The wording of these regulations and the supplementary provisions (sections 140-144 of the Regulations concerning the Independent Commission of Genoa, confirmed by the Royal Decree of 11 April 1926, No. 736) leaves no possible doubt; the Commission has a definite civil jurisdiction for the settlement of disputes, in which it creates no new law but applies the existing law to individual cases. Similarly, sections 14-16 of the Mercantile Marine Code empower the harbour-masters to settle disputes on points of law arising out of seamen's work.

The Legislative Decree of 23 October 1930, No. 1422, which contains further amendments to the Act on the Genoa Commission, attached a section for labour questions to the committee of the Commission, and gives it, among others, the duty of deciding on the regulations to be issued concerning the employers, sub-contractors (if any), and workers in the port, and the rules and wage scales for the services of the port and the work done there.

A special Royal Commissioner for the port of Naples was appointed in 1922, and his duties were defined in the Decree of 25 March 1923, No. 1018. Among other things, he was to "issue regulations concerning the loading, unloading, transport and storing of goods, and to fix the charges for putting travellers on board and ashore and for all other services performed in the port".

In Venice, a sub-committee on labour questions was attached to the port authority which appointed councils for the various zones of the port and settles the labour disputes that arise. In 1918, 119 cases were settled without a single appeal¹.

Lastly, it should be noted that the Royal Committee on Legislative Reform was guided by similar ideas when it incorporated the provisions mentioned concerning dock labour offices, dockers' societies, etc., in the Draft Seamen's Code (sections 134-147); while section 136 states that:

The scales for the payment of workers employed in the operations named in section 134 for the purpose of transporting goods, the charges for the use of machinery, buoys and other working apparatus, and the rates to be paid to undertakings performing work in ports and other persons acting on behalf of third parties with an interest in such work, require the approval of the Ministry responsible for the mercantile marine.

The regulation of conditions of employment in ports is thus in the last resort a State concern.

APPENDIX II

Important Cases Dealt With by the Labour Courts

A. — DISPUTE CONCERNING MECHANICS' WAGES IN THE PROVINCE OF GENOA

To supplement the national agreement for the metal industry, a collective agreement for the staff of engineering works, dockyards, foundries, etc., in the province of Genoa was concluded on 14 December

¹ MINISTERO DELLE COMUNICAZIONI: *La Marina Mercantile Italiana*, 31 Dec. 1928, p. 204. Rome, 1931.

1928. The Confederation of Industrial Workers' Unions refused its consent, and an open conflict arose which, after the usual negotiations between the two national federations concerned, was submitted to the Ministry of Corporations for examination. The Ministry was also unable to conciliate the parties, and the case was then brought before the Genoa Labour Court. This authority's efforts at conciliation were more successful, agreement being arrived at between the parties on all the points in dispute. The minute drawn up concerning the settlement enumerated the groups of workers covered, defining each with examples, and prescribed minimum wage scales for metal and engineering undertakings registered in the City or Province of Genoa, piece-rate bonuses, minimum piece rates, and rates for night and holiday work. Moreover, temporary arrangements concerning the mutual benefit sickness funds and the calculation of minimum wages in individual cases were also made.

B. — THREE CASES SETTLED BY AWARD

The following three cases were settled by award :

I. — *Award of the Rome Court of Appeal, acting as Labour Court, in the dispute concerning the economic conditions of employment of seamen.*

Since the seamen's wage regulation was to expire on 31 December 1927, and no new agreement had been reached between the competent associations despite the intervention of the Ministry of Corporations, the case, as affecting the whole country and not a single commune or district, was brought before the Rome Labour Court on 23 December.

The employers applied for a 20 per cent. reduction in the remuneration of ships' officers, employees and lower ratings. The Seamen's Federation offered the following reductions :

- (1) *for unmarried men* (a) for officers, 8 per cent. on passenger and mixed passenger and cargo steamers, and 3 per cent. on cargo steamers ; (b) for lower ratings, 3 per cent. on all vessels ;
- (2) a deduction from the monthly pay of all lower ratings on passenger and mixed passenger and cargo steamers on the basis of 15 lire in the case of ordinary seamen.

The carefully considered award of 28 January 1928 notes first of all that index figures " may be of value for other purposes, but can hardly serve as a basis for the calculation of an increase or decrease in the cost of living ". It further states that the reduction in the pay of the lower ratings previously introduced with the consent of the seamen concerned " roughly corresponds with the fall in the cost of living which has been seen to occur, account being taken of the daily struggle which consumers and especially the families of the poorer classes, who are frequently compelled to buy on credit, have to carry on against the devices of retail traders ". The award added that the reduction in the pay on cargo vessels had certainly been smaller, but that even there " the pay had in any case been rather low and left little margin for a further reduction ".

The award therefore concluded as follows : " A reduction in seamen's wages, if undertaken now on the basis of the facts, could at best be no more than very slight, and, while having practically no effect on the total working expenses of the vessel, it would certainly lead to a change for the worse in the relations between seamen and shipowners.

" Moreover, a reduction of such dimensions as to entail a real saving for the shipowners could not be regarded as justified by existing conditions, but would have to be based on an expected fall in the cost of living in the future, in which case account should also be taken of the benefit to shipowners of the recent stabilisation of the currency.

" These two factors have undoubtedly to be reckoned with, though they have not yet had sufficient effect to enable their influence to be correctly estimated. It is therefore very possible, in attempting to regulate conditions for the future, to go to the other extreme of reducing wages too far, which would be even more dangerous than leaving them at too high a level. For all these reasons, and pending the definite stabilisation of prices which should follow that of the currency, the Court holds it to be logical and for the moment just for the scheme obtaining until 31 December to remain in force for the whole crew of vessels (apart from the stipulations concerning the adjustment for equalising wages on passenger and cargo vessels) for six months, that being the probable length of the transition period the economic system of the country needs in order to arrive at stable conditions. If limited to this short space of time, the sacrifice required of the shipowners ought to be supportable, and indeed it appears equitable that the shipowning firms, being undertakings, should bear this as part of their business risks. When the end of the prescribed period approaches, the parties shall be entitled to re-open the question in the light of any change in conditions which may have arisen."

II. — *Award of the Turin Labour Court in the dispute concerning the wages of agricultural labourers in the Province of Vercelli.*

The collective agreement of 1930 concerning the conditions of employment of agricultural workers having expired, and no new direct agreement having been concluded despite the attempt at conciliation by the Ministry of Corporations, the case came before the labour court. The sole issue was the scale of wages. The workers demanded maintenance of the rates of 1930, while the employers called for considerable reductions based on the fall in the price of rice. The following figures show the respective demands of the parties :

	Men lire	Women lire
For unskilled work :		
the workers demanded	11.20	6.40
the employers offered.	8.00	4.00
For skilled work, first group :		
the workers demanded	12.80	9.60
the employers offered.	10.40	8.00
For skilled work, second group :		
the workers demanded	12.00	8.00
the employers offered.	9.20	6.40

The case was decided by an award issued on 27 April 1931. The Court first of all carefully examined the position of agriculture in the province from the technical, economic and social points of view, and then attempted to calculate the average cost of production of its most important branch, rice growing. Labour costs were estimated at 70 per cent. of the total (the employer bearing the risk of bad harvests), and on this basis it was computed that an average price of 60 lire per quintal (which, it was incidentally established, was not usually obtained) corresponded to an average wage of 9.52 lire per day. But this was

found to be insufficient to meet the workers' most urgent needs, and the Court therefore fixed the rate at 10 lire, which would correspond to a cost of production of 63 lire per quintal. The following rates per hour were therefore fixed for the 1931 harvest, to come into force immediately :

	Unskilled work	Skilled work (first group)	Skilled work (second group)
	lire	lire	lire
Men . . .	1.25 (10)	1.40 (11.20)	1.30 (10.40)
Women .	0.65 (5.20)	1.10 (8.80)	0.90 (7.20)

For purposes of comparison, the rates payable for an eight-hour day are added in brackets. As may be seen, the award takes roughly the middle course between the demands of the two parties, but slightly favours the workers. Its rates are, moreover, somewhat higher than those proposed by the Ministry.

III. — *Award of the Rome Labour Court in the dispute on the conditions of employment of rice huskers.*

The collective agreement of 1930 having expired and no new agreement having been arrived at between the associations concerned, despite an attempt at conciliation by the Ministry, the case was brought before the Labour Court.

The parties were agreed that the fall in the price of rice necessitated a reduction in wages, but differed in their views on the amount of this reduction. The workers proposed 20 per cent., the employers 35 per cent.

In issuing its award, on 18 June 1931, the Rome Court, unlike that of Turin, abstained from making a detailed examination of the facts, and merely emphasised the supreme importance of the interests of production, which should take precedence over those of employers and workers. It then referred to the laborious work required of rice huskers, and reduced wages by 24 per cent. as compared with the rates in force in the previous year.

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SPAIN

§ 1. — Economic Background and Development

The Spanish Statistical Yearbook for 1929 gives the area of that country, including the Balearic Isles, Las Palmas and Teneriffe, as some 503,000 square kilometres. At the last national census (1920), the population was 21,338,000, and the communal census of 1 December 1928 showed it to have increased to over 23,000,000. Agriculture is the dominating element in Spanish economic life, and large areas are planted with wheat, barley, oats, rye, maize and rice, vines and sub-tropical fruits. There is also a considerable production of olive oil and cork and a large stock-raising industry, while the fisheries, which are chiefly engaged in sardine and tunny fishing, give occupation to 70,000 seamen.

Spain has also much mineral wealth, principally gold, silver, copper, tin, lead, zinc, mercury, sulphur and coal. The Basque country is the centre of the metal industry and Catalonia that of the textile industry (wool and cotton), while Valencia concentrates on wood and furniture, and Aragon and Andalusia on sugar; the glass, small arms, and minor industries are concentrated at Toledo, and the tobacco industry at Seville. The iron mines of Somorestro, the lead mines of Linares, the copper mines of Rio Tinto, and the quicksilver mines of Almadén are world-famous among Spanish industrial undertakings.

No occupational statistics are compiled in Spain, and it is therefore impossible to state how many workers are employed in agriculture, commerce and industry respectively. The only available information of the sort is provided by the membership figures of the Spanish trade unions, the most important of which are the General Federation of Spanish Workers (*Unión General de Trabajadores de España*), the Federation of Free Trade Unions (*Confederación de Sindicatos Libres de España*), and the National Confederation of Labour (*Confederación Nacional del Trabajo*). On 1 January 1931 the unions of an Anarchist-Syndicalist tendency had 632,000 members, while the "free" and Christian unions

counted 274,000 and 40,000 respectively¹. The Anarchist-Syndicalist unions have made great progress at the expense of the free unions, especially since the overthrow of the dictatorship².

The problem of collective labour disputes and their settlement aroused interest in Spain at a comparatively early date. The Act relating to conciliation and arbitration boards for industrial disputes (*consejos de conciliación y arbitraje industrial*) of 19 May 1908³ was the first Spanish legislative measure on the subject. It provided that an attempt at conciliation should be made before a strike or lock-out might take place. When a strike was threatened, or at least 24 hours before it commenced, the workers concerned were required to notify the chairman of the local committee for social reform, in writing, of their intention, giving also a short statement of the causes of the strike. This obligation did not apply to workers' organisations, for it was not until the issue of the Royal Decrees of 10 August 1916⁴ and 25 August 1923⁵, that they were given legal personality and employers were compelled to recognise them, but simply to workers intending to strike. Employers contemplating a lock-out were under a similar obligation, though in their case notice had to be given a week before action. In case of non-compliance, leaders and instigators were liable to fines of 100 to 125 pesetas (workers) and 240 to 1,000 pesetas (employers). If a dispute arose between a group of workers and one or more employers, either party was entitled to notify the chairman of the local committee, who presented the other party with a copy of the notice within 24 hours and allowed that party a short period within which to decide whether to accept his mediation. If so, conciliation proceedings were begun; if not, conciliation was deemed to have been attempted.

The Act thus left each party free to accept or reject mediation. As soon as they declared their willingness to come to an agreement, the chairman of the local committee proceeded without delay — the actual period allowed is not defined in the Act — to nominate the members of a conciliation board composed of three employers' and three workers' representatives, who were chosen from lists drawn up in conformity with section 12 of the Industrial Courts Act⁶. The board heard the parties, and had to see to it that no

¹ Cf. *Freedom of Association*, Vol. IV, pp. 191 et seq.

² According to the newest statistics of the trade unions (October 1932) the Unión General de Trabajadores de España has now one million members.

³ *Bulletin of the International Labour Office* (Basle), Vol. IV, 1909, p. 148.

⁴ *Bulletin of the International Labour Office* (Basle), Vol. XII, 1917, p. 67.

⁵ *Legislative Series*, 1923, Sp. 5.

⁶ *Bulletin of the International Labour Office* (Basle), Vol. IV, 1909, p. 142.

interruption of work took place during the proceedings, though the parties themselves were not obliged to continue work. If an agreement was concluded, its terms were set forth in a document which was signed by the parties or their representatives and deposited at the office of the board.

The Act provided for a further possibility if the first attempts at conciliation failed. The board could propose that the disputing parties should nominate persons fully authorised to continue negotiations on their behalf ; but here again the parties were not obliged to comply. The persons authorised could be members of the board or other persons, without distinction of sex. It was their duty to come to an agreement before the board respecting the points to be submitted to arbitration, and they were empowered to fix penalties for failure to observe the terms of the settlement. If one of the parties failed to appear, or if no agreement or award was arrived at, the conciliation board could again cite the persons concerned and proceed as above described. If this attempt too ended in failure, the fact was recorded, and no further steps were taken except in pursuance of a request drawn up and signed by both parties jointly.

As may be seen from this summary, Spain possessed a by no means incomplete system for the adjustment of industrial disputes in 1908 — that is, at a comparatively early date. It was based on the free co-operation of the parties, and, apart from the obligation to notify strikes and lock-outs, it made no provision for compulsion. Its weakest point was that trade associations as such were not required to take part in the proceedings, but this circumstance was altered under the above-mentioned Decrees of 10 August 1916 and 25 August 1923, which gave the trade unions legal personality and obliged the employers to recognise them. In view of this recognition of trade associations, permanent or *ad hoc* joint committees were set up to prevent and settle labour disputes.

This system was extended by the Royal Decree of 24 April 1920, establishing the first joint labour committees in the province of Barcelona, and the Royal Decree of 5 October 1922¹ concerning the establishment of permanent and *ad hoc* joint committees. Similarly, the above-mentioned Decree of 25 August 1923 provided for the establishment of *ad hoc* joint committees for labour disputes in certain large undertakings.

These measures are analysed in the International Labour

¹ *Legislative Series*, 1922, Sp. 2.

Office study on freedom of association, to which reference may be made¹. The joint committees thus called into existence were the precursors of the joint committees compulsorily instituted under the Legislative Decree of 26 November 1926 providing for the national corporative organisation of industry². The establishment and composition of these committees and of the mixed commissions above them, of the corporations and corporative councils and of the Delegate Commission of Corporative Councils, the powers of these joint bodies, and the whole method by which they work within the National Corporative Organisation, have also been described and discussed fully in the study on freedom of association³. All the provisions on the adjustment of industrial disputes, including those of the Act of 7 May 1931⁴ on joint boards for agriculture, have now been incorporated in the Act of 27 November 1931⁵ on joint boards for industrial and rural employment, rural property and agricultural production and industries, which thus contains the regulations now in force. The joint boards for the railways are regulated by the Act of 19 September 1931⁶. Finally, the Decree of 29 May 1931⁷, which is still in force, assigns to the Provincial Labour Delegates certain special functions connected with conciliation.

§ 2. — The System in Force

GENERAL OBSERVATIONS

The Act of 27 November 1931, which to a large extent resumes the legislative process begun with the Decree on the national corporative organisation of industry, establishes three types of joint boards : for

- (a) industrial and rural employment,
- (b) rural property, and
- (c) agricultural production and industries.

¹ Cf. *Freedom of Association*, Vol. IV, pp. 237 et seq.

² *Legislative Series*, 1926, Sp. 6.

³ The National Corporative Organisation as created by the Order of 26 November 1926 was remodelled under the Act of 8 March 1929 (*Legislative Series*, 1929, Sp. 1), but its principles remain unchanged.

⁴ *Legislative Series*, 1931, Sp. 6.

⁵ *Ibid.*, 1931, Sp. 15.

⁶ *Ibid.*, 1931, Sp. 12.

⁷ *Ibid.*, 1931, Sp. 3.

These boards are public bodies, whose duty it is to govern the activities of the occupations concerned and act as conciliation and arbitration authorities. Only the first-named type of board concerns this study, for the others have no function directly connected with labour law. Those for rural property govern the relations between landowners and tenants, and those for agricultural production and industries are required to reconcile the interests of agriculture with those of the industries connected with it by the fact that they work up agricultural products.

Moreover, not all the functions of the joint boards for industrial and rural employment come within the scope of this study, as may be seen from section 19 of the Act, which gives the following definition :

The functions of the joint labour boards shall be as follows :

1. To determine for the particular trade or occupation the general conditions for the regulation of employment (wages, minimum period of validity of contracts, hours of work, overtime, form of and circumstances justifying dismissal), and all other conditions which may serve as a basis for individual or collective contracts of employment.

Further, the joint boards for rural employment shall regulate the housing of workers whose remuneration is not exclusively in the form of money wages.

2. To deal with all matters concerning overtime payment, disputes on wages, etc., which are referred to them, and which arise out of the interpretation and fulfilment of obligations under contracts of employment, provided that the sum of money at issue does not exceed 2,500 pesetas.
3. To prevent disputes between capital and labour and to endeavour to settle such disputes if they arise.

The procedure to be adopted by the boards in this respect is prescribed in sections 39, 40 and 41 of this Act.

4. As prescribed by law, to supervise the observance of social legislation, and in particular the execution of the decisions made by the boards themselves and individual contracts and collective agreements, which must fulfil the minimum conditions prescribed by the boards.
5. To compile occupational registers and maintain the necessary relations with the employment exchanges.
6. To propose to the Government the adoption of the technical and occupational measures which they consider necessary for the life and growth of the industries they represent.
7. To carry out any other social function which may benefit the occupation concerned.

The functions specified under (1), (3) and (4) thus either refer directly to the adjustment of labour disputes or are closely connected with it. A further duty is provided in section 20, which empowers the boards to decide questions in respect of which they

are not strictly competent, if explicitly appealed to for arbitration by the employers and workers.

The boards are established by the Minister of Labour and Social Welfare either directly or on application¹, and industrial and agricultural undertakings and occupations are divided into twenty-four groups for the purpose². In contrast with previous

¹ Where boards do not yet exist, the provisions of the Act of 19 May 1908, described above, as amended and extended, continue to apply.

² 1. *Fishing*. — Fishing in general; tunny fishing.

2. *Agriculture and forestry*. — Cultivation in general; stock raising; agricultural and forestry undertakings; working up of wood at the place of origin; cork; the making of corks; the resin industry; fire-wood and charcoal; white cooperage; basket making; esparto grass working; horticulture; arboriculture; afforestation; bee-keeping; tobacco planting and preparation.

3. *Food industry*. — Milling; biscuits, macaroni, etc., baking; butchery and pork butchery; tinned foods (meat, fish, fruit, vegetables, milk, etc.); oils and fats; sugar and sweets; butter and cheese; chocolate; pastry; confectionery, etc.; manufacture of alcohol, wine, vinegar and liqueurs; distilleries and other establishments connected with the drinks industry; beer and aerated waters, artificial ice.

4. *Mining*. — Mines, salt pits, springs.

5. *Iron and heavy metal industry*. — Metal works, manufacture of plates, sheet-iron, hoop-iron, bars, sections, ingots and other products for industry; armour-plate, heavy gun barrels, shells, soldered and seamless gun barrels; in general, various primary products of copper, iron, lead, tin, zinc and other metals and alloys.

6. *Light metal industry*. — Metal framework, objects for steel buildings, foundries (cupola and crucible) for iron and other metals; special steels; boilermaking; steam, internal combustion, and hydraulic engines; machinery and component parts; mechanical and hand forges; locksmiths' and fitters' shops; metal work; tools for industry, etc.; zinc, tinplate, steel plate, etc., goods; luxury articles of gold, silver, bronze and other metals; metal stamping; electro-plating; buttons, clasps, signboards, metal ornaments, etc.; wire gauze, chains, keys, screws, needles, wire, cables; firearms and steel weapons; cutlery (table and industrial); scales and weighing machines, weights, safes, lamps, taps, etc.; ventilation and heating apparatus; goldsmiths' work; precious stones; jewellery; watch-making.

7. *Electrical and scientific instruments*. — Instruments, apparatus and materials for the generation, transmission and transformation of electric power and light; optical, photometric, surveying, astronomical, meteorological, musical, medical and surgical instruments; weights and measures; teaching and laboratory material.

8. *Chemical industry*. — Manufacture of chemicals used in crafts and industries, pharmacies and agriculture. Chemical substances of animal, vegetable or mineral origin; gases, acids and salts; greases and lubricating oils, varnishes, colours, candles, soap, matches, glue, lye, fertilisers, essences and scents; by-products of coal-tar distillation; refineries; powder and explosives; rubber; celluloid and similar substances; paper and pasteboard; manufacture and working up of cardboard; hides and skins (tanning, furriers' work); steel and leather goods; paper bags and cardboard boxes.

9. *Building industry*. — Quarrying; production and preparation of all sorts of stone and earthen materials for construction and hydraulic works; cement, stone, marble, mosaic, and artificial stone; pottery and china; glass and glassware; all branches of the building trade, including decoration, ventilation and the sanitary fittings of buildings; ships' carpentry; construction and maintenance of roads, canals, harbours, hydraulic works, etc.

10. *Wood industry*. — Cabinet making; chair making and upholstery; wood,

legislation, home work is also within the scope of the Act, but domestic service and the liberal professions are excepted from its application.

Another type of work to which the Act does not apply is that in undertakings and on estates administered directly by the State and in public services administered on behalf of the State provinces, communes or other public authorities. The Act provides that special joint bodies are to be established for this type of undertaking, on which the authorities and the workers are to be represented. The conditions of employment in these undertakings may not be less favourable for the workers than those in similar undertakings or occupations. The Ministry of Labour and Social Welfare may make special regulations governing the procedure of joint boards in certain public services of a national character, but such regulations must not depart from the general principles laid down in the Act. Regulations for the National Telephone Company were issued on 18 March 1932 ¹.

FORM, COMPOSITION AND DISSOLUTION OF THE JOINT BOARDS, AND RELATED QUESTIONS

The boards are composed, as a rule, of six employers' and six workers' representatives, with the same number of substitutes, a chairman and a deputy chairman. A board may be divided

ivory and bone turning ; carving ; mechanical saw-milling ; joinery ; cooperage ; carpentry ; moulding ; sculpture ; inlaying.

11. *Textile industry.* — Cotton, wool, hemp, jute, linen and silk ; finishing ; embroidery, lace, velvet and carpet making, and in general all kinds of weaving ; cord making.

12. *Clothing industry.* — Trimmings ; boots and shoes ; mattresses ; hats and caps ; ready-made clothes of all sorts ; related trades (gloves, belts, corsets, fans, umbrellas, walking-sticks, etc.) ; dyeing, washing and ironing ; artificial flowers, feathers ; other millinery trades.

13. *Printing and allied trades.* — Printing, lithography, engraving, photography and other graphical reproduction processes ; book publishing, publishing of periodicals ; bookbinding.

14. *Railways.* — All industries, trades and operations connected with railways.

15. *Other land transport.*

16. *Maritime and aerial transport.*

17. *Water, gas and electricity.* — Production and distribution.

18. *Communications.* — Post, telegraph, telephone, wireless telegraphy.

19. *Commerce.* — Warehouses ; wholesale and retail trade.

20. *Hotel industry.* — Hotels, inns, restaurants, cafés, bars, beershops, taverns and similar establishments.

21. *Hygiene services.* — Baths, hair-dressing, shoe-blackening and other hygienic and toilet services.

22. *Banking, insurance, and offices.*

23. *Public entertainments.*

24. *Other industries and occupations.*

¹ *Gaceta de Madrid*, 19 March 1932.

into several sections for reasons of efficiency, or several boards may be combined for reasons of economy. The chairman and deputy are appointed by a unanimous vote of the members or, failing this, by the Ministry of Labour and Social Welfare from a list of three candidates proposed respectively by the employers' and workers' organisations concerned and the provincial labour delegate ¹.

The administrative staff is appointed by the Ministry, secretaries being required to prove their aptitude for the work by means of examinations.

The members are elected by the legally constituted trade associations of employers and workers, or, if such do not exist, by direct secret ballot by the employers and workers of the occupation concerned. Only associations which fulfil the statutory requirements (to be definitively laid down in the contemplated Trade Associations Act), and entered in the electoral register for social purposes at the Ministry of Labour and Social Welfare, are entitled to vote. The members hold office for three years.

The functions and responsibilities given to the joint boards under section 19 of the Act, quoted above, are so considerable that the exactitude with which the procedure for the election of the members is prescribed is by no means surprising. It can only be summarised here. The employers' associations usually receive one vote for every hundred workers employed. The election takes place within the associations in accordance with their rules or standing orders; it is provided that a representative of the authorities shall be present at the election of the [workers' representatives. Each elector may vote for as many candidates as there are to be representatives of his category. The provincial labour delegate is responsible for the counting of the votes and the declaration of the result; appeal to the Ministry of Labour and Social Welfare is provided for, in which case that authority, after hearing the opinion of the Labour Council, issues a final decision ². If the employers or workers refuse to elect representatives without good

¹ The provincial labour delegate is the head of all the authorities under the Ministry of Labour in the province; he has important functions respecting the fixing of conditions of work and the adjustment of disputes by the joint boards, which will be referred to as they arise. (Act of 15 May 1932; Decree of 3 November 1931 concerning the reorganisation of the Ministry of Labour and Social Welfare, Chapter V.) Other functions relating to conciliation are assigned to the provincial labour delegates by the Decree of 29 May 1931 (*Legislative Series*, 1931, Sp. 3), an account of which is given below.

² The Labour Council is an advisory body set up by the Ministry of Labour in 1924. It is at present undergoing reorganisation as a result of the institution of the joint trade boards and the new duties assigned to it by this Act.

reason, these may be nominated *ex officio* by the Ministry. This secures the actual establishment of joint boards in all cases in which the Government regards it as desirable. The provision that the board may still function even if one side is not represented, and may thus perform its supervisory duties even when incomplete, is also important.

The joint boards being public bodies, the chairman, deputy chairman and members have the privileges of public authorities when performing their functions, and members, once nominated, may resign or cease to perform their functions only for certain reasons specified in the Act — namely, justified and permanent transfer of residence outside the area for which the board is competent, change of occupation, involuntary loss of membership of the organisation represented, or other reason judged sufficient by the Ministry in each individual case.

In order that the workers' members may be able to attend the sittings of the board, these must as a rule be held outside statutory working hours. The board refunds to the workers' members any wages lost as a result of attending sittings.

The boards draft their own standing orders, but must submit them for approval to the Ministry, which may amend them after hearing the opinion of the Labour Council.

If the activities of a board cause disputes or a disturbance of the peace, or take an illegal or disorderly form, the Ministry may suspend it at the suggestion of the provincial labour delegate, or dissolve it after consulting the Labour Council ; in the latter case, new elections take place. Boards which neglect their duties are liable to administrative penalties.

The State bears the expenses of the boards, which are provided for in the estimates of the Ministry of Labour and Social Welfare.

FUNCTIONS AND PROCEDURE OF THE BOARDS

Section 19 of the Act quoted above shows that the boards have wide and varied functions. Three in particular relate to the adjustment of industrial disputes and therefore deserve special attention, namely : the general obligation to determine the bases for conditions of employment in the trade or occupation concerned ; the duty of supervising the observance of the regulations on these conditions and punishing contraventions ; and thirdly, the duty of settling collective labour disputes.

THE DETERMINATION OF GENERAL CONDITIONS OF EMPLOYMENT

This is the principal function of the boards. Although the Act uses the expression "determination", in practice it is usually a question of arriving at this result by way of agreement between the representatives of the parties; that is to say, the board acts as a mediator, and it is only when there is no prospect of agreement that it decides outright and so determines conditions in the true sense of the word.

Decisions are adopted by an absolute majority of votes. On a first convocation, an equal number of employers' and workers' members must be present, but on a second convocation a vote is valid even if the numbers are not equal. In this case, and in that of extraordinary sittings of the board, only questions entered on the agenda may be discussed and decided.

The chairman has a casting vote only if the voting is still equal on a second ballot; in other cases he acts as a mediator and endeavours to bring about an agreement; he may make proposals for compromise with this object in view.

In order to elucidate the facts of the case, the chairman may call on the members to give information or their opinion, and technical experts may be nominated as assessors by the parties or by the Ministry of Labour and Social Welfare at the suggestion of the chairman or the provincial labour delegate.

When determining the bases for conditions of employment -- by which is meant in particular the regulation of wages, hours, overtime and circumstances justifying dismissal -- the boards must also fix a period of validity, otherwise their decisions are void. The Act provides for a minimum period of validity of one year and a maximum of two years. Contracting out of the conditions in individual contracts or collective agreements is prohibited¹. The fixing of minimum wages for home work is also provided for in the Act, but the details are of no importance so far as this study is concerned.

The wide powers of the boards to determine bases for conditions of employment that are binding on the parties has made it necessary to provide legal remedies against their decisions and to lay down a special procedure for the purpose.

¹ Cf. sections 9-12 of the Act of 21 November 1931, *Legislative Series*, 1931, Sp. 14 (Contracts of Employment, Collective Agreements).

The provincial labour delegate and the Ministry of Labour and Social Welfare must be informed of all votes and decisions of the boards within 24 hours of their adoption. Appeal (*recurso*) against a decision relating to conditions of employment may be made within ten days of its publication in the Official Gazette, which must have been notified within 24 hours of adoption. On expiry of this period, the chairman submits a report to the provincial labour delegate, who passes it on, with his own opinion, to the Ministry of Labour and Social Welfare within five days; the latter authority issues a final decision within twenty days, after consulting the Labour Council.

Decisions of the boards concerning conditions of employment or other matters come into force on the day of their publication in the Official Gazette, if no appeal is made within the prescribed period and if the provincial labour delegate does not, within five days, report that they are illegal.

Even if no appeal has been lodged and no illegality reported, the Ministry of Labour and Social Welfare may amend the decision of a board, after consulting the Labour Council, if such decision, in the opinion of the provincial labour delegate, tends to prejudice the interests of the occupation concerned. The Ministry may also instruct the Council to examine decisions with the object of simplifying and co-ordinating them and evolving national standards for labour conditions. The Ministry's action in this respect is not subject to appeal.

The fact that the Act makes the joint boards public institutions means that the conditions of employment established by them have the force of public law and that their observance must be safeguarded by penal sanctions. The boards have therefore been explicitly given the function of supervising the observance of social legislation, of their own decisions in particular, and of individual contracts and collective agreements; the latter must, as has been noted, fulfil the minima prescribed by the boards in their decisions. In order to perform this function the Board may appoint special supervisory assessors who have the character of auxiliary officials of the factory inspection service for the execution of their duties; and in case of non-observance of the conditions fixed they may propose to the provincial labour delegate the infliction of fines ranging from 25 to 250 pesetas for a first offence and to 1,000 pesetas for a repeated offence. If the fine exceeds 500 pesetas, an appeal may be made to the Minister of Labour and Social Welfare, who gives his decision after consulting the Labour Council. In order to prevent delay, penal proceedings

must be held within a short period (5, 8 or 10 days). Collection of unpaid fines is undertaken by the court within 14 days on application by the provincial labour delegate.

SPECIAL PROCEDURE IN CASE OF LABOUR DISPUTES

On the outbreak of a collective labour dispute, the party intending to take direct action (strike or lock-out) is required to notify the competent joint board or subsidiary board attached to it, in order that this body may intervene in good time. As a rule, proceedings take place first of all before the subsidiary board, but, even when there is such a board, the principal board may intervene at once if it considers the case to be sufficiently important.

The parties have to appear within twenty-four hours before the principal board, which may give a hearing to other persons also if such action appears likely to assist it in forming an opinion on the case.

The representatives of the parties must be fully authorised to negotiate on all the points in dispute and to conclude a collective agreement.

If a settlement is reached, its terms are put in writing and signed by the parties. If there is danger of a strike or lock-out, the representatives of the parties are bound to intervene for its prevention.

If the subsidiary board has first attempted conciliation without success, the competent principal board may make a fresh attempt within two days. If this too is unsuccessful, the Ministry of Labour and Social Welfare may call upon the parties to submit the case to the Labour Council, as supreme authority, within five days. Such a step on the part of the Ministry is contemplated mainly for disputes in undertakings of public importance, e.g. railways, tramways, and gas, water and electricity works.

Finally, the joint boards may propose to the parties that arbitration proceedings be opened. If such a proposal is accepted, a document is drawn up recording the obligation of the parties to accept the arbitration award, which is then binding on them. If the attempts at conciliation fail and the parties also refuse to accept arbitration, the board draws up a report of the case with its proposals for a settlement. This is submitted to the Ministry, which may publish it or not as it thinks fit.

This special procedure differs from other duties of the boards in that, except for the obligation to notify conflicts, it provides

no compulsion, but is largely based on the free will of the parties. Nevertheless the provision that a period of forty-eight hours in ordinary cases, and of five or eight days in disputes in undertakings of public importance, reckoned from the date of notification, must elapse before a strike or lock-out may be begun, contributes largely to the efficacy of the procedure. Contravention is punishable with fines of 5 to 150 pesetas for workers, and 250 to 1,000 pesetas for employers, in undertakings in general, while in case of conflicts in undertakings of public importance, the leaders and instigators may be imprisoned. The same punishment awaits the leaders and instigators of conflicts in contravention of a conciliation agreement or arbitration award, and employers who do not observe the terms of such settlements ¹.

The responsibility of the trade organisations for such occurrences is also provided for, and will be governed by the Trade Associations Act, which has not yet been issued.

JOINT BOARDS FOR RAILWAYS

A special system for railways is laid down by the Act of 19 September 1931 ². According to this system the Ministry of Labour and Social Welfare sets up joint boards for individual railways or groups of railways. Each board consists of a chairman, a deputy chairman and a secretary appointed by the Minister, together with assessors representing the employers and the workers and employees on a basis of equality (three to six on each side). The employers' representatives are appointed by the directors of the railways, and the workers' representatives are elected by the trade unions, following a well-defined procedure. Only workers employed by the undertakings for which the board is being set up may vote or be elected. The assessors are elected for three years.

In addition to the several joint boards there is a central board which also consists of a chairman, a deputy chairman and a secretary appointed by the Minister of Labour and Social Welfare, together with three assessors on each side elected by the assessors on the several joint boards.

The powers of the joint boards and the central board are still regulated by the provisions of the Decree of 26 November 1926

¹ For details concerning the right to strike or to declare a lock-out, a subject which does not fall within the scope of this study, cf. INTERNATIONAL LABOUR OFFICE: *Freedom of Association*, Vol. IV, pp. 199 et seq.; and also the new Act on the Defence of the Republic of 21 October 1931, though this is of a purely political nature.

² *Legislative Series*, 1931, Sp. 12.

relating to national corporative organisation, with the amendments of 8 March 1929 relating to joint trade boards and corporation councils¹. (This Decree was incorporated in the laws of the Republic by an Act of 9 September 1931.) In addition to other functions outside the scope of the present study, they are called upon to determine basic conditions of labour and to carry out conciliation procedure in disputes. The central committee, however, has only informatory powers so far as the determination of basic labour conditions and the decisions of the boards in general are concerned, the final decision resting with the Ministry of Labour and Social Welfare.

Tramways are covered by the general Act of 27 November 1931.

SPECIAL FUNCTIONS OF THE PROVINCIAL LABOUR DELEGATES ACCORDING TO THE DECREE OF 29 MAY 1931

The Act of 27 November 1931 does not affect the validity of the Decree of 29 May 1931², which assigns important functions relating to conciliation in collective labour disputes to the district delegates (now provincial delegates)³.

If it comes to the knowledge of a provincial delegate that a group of workers or a trade union has begun a collective dispute with an employer or group of employers, or *vice versa*, in order to secure a change in the existing conditions of labour, and that the disagreement may lead to a disturbance in the industry concerned, it is his duty to send for representatives of the employers and workers involved in the dispute and require them to submit the case to the competent joint committee⁴ or to an arbitrator acceptable to both sides.

If this effort fails, the provincial delegate must require both sides to appoint representatives with full powers to discuss the matter under his chairmanship.

Decisions reached by the procedure described above through joint committees (or trade boards), an arbitrator or the provincial delegate may not make any essential alteration in the conditions of work laid down by law or in the basic labour conditions already determined by joint committees (or trade boards). They are limited to interpreting and supplementing existing texts.

¹ See above, Section 1, *ad finem*.

² *Legislative Series*, 1931, Sp. 3.

³ The Ministry of Labour and Social Welfare may also appoint special delegates for individual cases. In the absence or incapacity of such delegates their functions devolve on the governors or mayors.

⁴ The joint trade boards set up under the Act of 27 November 1931 would obviously be indicated where they exist.

If the last-mentioned procedure of the provincial delegate leads to no decision either because of the failure of one of the parties to appear or because of the attitude of one of the parties in the negotiations, the existing conditions of work remain in force. Any action which, in the terms of the Decree, aims at interfering with the freedom of labour on the basis of these conditions is illegal and gives rise to prosecution. In such an event the provincial delegate must take no further action and the matter is turned over to the police.

The provincial delegates are empowered to impose penalties, within the limits of provincial legislation, on persons who fail to appear after being convened to attend conciliation proceedings.

§ 3. — Statistical Data

Table I shows the number of strikes, the number of workers involved and the number of working days lost in the years 1905 to 1929. Table II shows the results of the strikes. No statistics of the activity of joint trade boards are available.

TABLE I

Year	Number of strikes	Number of workers	Working days lost
1905	130	20,176	—
1906	122	24,394	—
1907	118	12,671	—
1908	127	12,748	—
1909	78	6,683	—
1910	151	35,897	—
1911	118	22,154	—
1912	169	36,306	—
1913	201	84,316	2,258,159
1914	140	49,267	1,017,889
1915	91	30,591	382,885
1916	178	96,882	2,415,304
1917	176	71,440	1,784,538
1918	256	109,168	1,819,295
1919	403	178,496	4,001,278
1920	424	244,684	7,261,762
1921	233	83,691	2,802,299
1922	429	119,417	2,672,567
1923	411	120,568	3,027,026
1924	155	28,744	604,512
1925	164	60,120	839,934
1926	93	21,851	247,223
1927	107	70,616	1,311,891
1928	87	70,024	771,213
1929	96	55,576	313,065

TABLE II

Method of settlement	1924	1925	1926	1927	1928
Without direct interference or by abandonment of the undertaking.	28	30	14	10	13
By direct negotiations :					
between employers and workers	39	44	26	41	22
between employers and workers' organisations.	17	18	11	7	7
between employers' organisations and workers	—	1	—	—	1
between employers' organisations and workers' organisations	5	4	5	4	3
By conciliation and arbitration procedure	5	5	4	—	—
By interference of governors, military authorities and Government officials.	38	36	13	28	16
By interference of mayors and local officials of the Labour Council	20	22	20	10	13
By joint committees of employers and workers	3	4	—	7	12
Total	155	164	93	107	87

§ 4. — Summary

Spain has had legislation for the settlement of collective labour disputes by conciliation and arbitration since 1908. The system was based on the voluntary collaboration of the parties. In the course of time, following the recognition of trade unions, this legislation was developed further by the Decree of 26 November 1926 relating to national corporative organisation, which was revised by an Order of 8 March 1929. The revolution led to an extensive readjustment of conciliation and arbitration procedure, which remained, however, very closely bound up with the previous system. The principal text for the new procedure is the Act of 27 November 1931, but the joint trade boards for railways are regulated by the Act of 19 September 1931.

The wording of the existing legislation shows clearly that the greatest value is attached to voluntary agreement between the parties. Nevertheless the joint trade boards are empowered, in the event of failure to agree, to lay down compulsory basic labour conditions which cannot be altered either by collective agreement or individual contract. Since the joint trade boards are administrative bodies, their decisions have the force of law, and penalties may be imposed for failure to observe them.

In addition to the procedure before the joint trade boards for the determination of basic labour conditions, there is also a special procedure for labour disputes which is initiated by the joint board on the application of the parties, such application being obligatory before a strike or lock-out may be declared. Apart from this obligation, there are no elements of compulsion in the procedure, which depends upon the voluntary collaboration of the parties.

Finally, the Decree of 29 May 1931 assigns definite conciliatory functions to the provincial labour delegates, whose compulsory powers, however, are limited to that of requiring the appearance of the parties and imposing penalties for non-appearance.

The present system of conciliation and arbitration in Spain is an integral part of the new corporative organisation of the nation laid down in the Act of 27 November 1931 relating to the joint trade boards, and must be understood in this context. So far as the determination of basic labour conditions is concerned, it belongs to the class of authoritarian systems and shows features resembling those of the Italian legislation. On the other hand, inasmuch as it tolerates strikes and lock-outs, even though subject to stringent conditions and only in so far as basic labour conditions, conciliation agreements, or binding arbitrations awards are not infringed, the Spanish system is less rigid than the Italian.

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PORTUGAL

In 1930 ¹ Portugal — i.e. the mainland and outlying islands — had a population of about 6,650,000 spread over an area of nearly 93,000 square kilometres. According to official statistics, in 1928 the working population comprised 2,500,000 persons, or 42.5 per cent. of the whole, distributed among the principal occupations as follows : agriculture : 1,250,000, or 50 per cent. ; building 200,000 ², or 10 per cent. ; inland and maritime navigation : 60,000, or 2.4 per cent. ; liberal professions and public services : 200,000, or 8 per cent.

There are at present about 1,020 ³ trade unions in Portugal. Federations of unions of reformist tendencies exist in Lisbon, Oporto and Guimarães.

The central organisation of the employers' associations is the Portuguese Employers' Confederation (*Confederação patronal Portuguesa*). The most important of the federations are the Portuguese Federation of Industries, the Colonial Centre, and the General Federation of Agriculture in Lisbon, the "Commercial Federations" of Lisbon and Oporto, and the Industrial Federation of Oporto.

Section 277 of the Penal Code of 10 December 1852, which was carried over unaltered into the Penal Code of 16 September 1886 now in force, prohibits industrial disputes, i.e. strikes and lock-outs, under penalty of fines and imprisonment, in the following terms :

"Imprisonment of from one to six months, or a fine of from 5,000 to 120,000 reis, shall be imposed on (1) all combinations of employers of labour which attempt to force down wages abusively, and (2) all combinations of wage earners intended to suspend, prevent, or raise the cost of labour in any manner whatever."

¹ DIRACÇÃO GERAL DE ESTATÍSTICA : *Sétimo Recenseamento Geral da População* (1 December 1930). Cf. also *Anuario Estatístico de Portugal*, 1930.

² Professor Bento CARQUEJA estimates that there are at present about 50,000 industrial undertakings in Portugal, employing at least 250,000 workers. Cf. "As fabricas em Portugal", in *O Comercio do Porto*, 19 Sept. 1931.

³ Cf. *O Comercio do Porto*, 1 Jan. 1931, article by Mr. J. FRANCISCO GRILLO on "The Social Year, 1930". For a detailed description of the development of the trade union movement, cf. *Freedom of Association*, Vol. IV, pp. 285 et seq.

The first Republican Government suspended this clause by a Legislative Decree of 6 December 1910, and issued an Order on 17 August 1912 with a view to promoting the peaceful settlement of disputes¹. This Order remained in force after section 277 of the Penal Code had been restored by a later Order of 15 February 1927.

The Order of 17 August 1912 provides that on the proposal of the Department of Industrial Labour (*Repartição de trabalho Industrial*) and at the request of the arbitration courts² or of trade unions, unorganised employers or municipal councils, conciliation boards (*juntas de conciliação*) may be set up by Order in the more important industrial centres to prevent the outbreak of individual or collective disputes and to settle those which have arisen. They are to consist of two to five members and one or two substitute members, to be chosen jointly by the employers' and workers' organisations in the locality. The members of the committee elect a chairman and secretary from among themselves; should they fail to do so, the senior member acts as chairman. Where there are no occupational organisations, the Order provides that the committee shall be elected by the individual workers and employers at a special meeting and from a panel drawn up for the purpose. Women are also entitled to vote, and persons of both sexes over sixteen years of age are eligible for membership. The members are elected for three years and are re-eligible. Their election must be confirmed by the competent Minister.

The Order does not lay down detailed provisions respecting the procedure of the conciliation boards. They are required to hold at least one session a year, and must also meet, if requested by one of the members, a labour inspector, the administrative authorities, the chief health inspector or one of his officers, or an interested employers' or workers' organisation.

The decisions of the board are adopted by a majority vote. If the dispute falls within the jurisdiction of more than one board, a joint session may be held, to which the administrative authorities may send representatives.

The Order provides that the minutes of the board's proceedings and the decisions adopted may be made public. The secretary of

¹ *Bulletin of the International Labour Office*, Basle, 1914, Vol. IX, pp. 267-269.

² The courts here in question are those set up by the Act of 14 August 1889 and the Orders of 19 March 1891, 14 April 1894, 2 December 1914, 13 October 1920, 12 October 1928, and 2 and 29 April 1929, primarily for the settlement of individual labour disputes. They appear in a few cases to have intervened in collective labour disputes also, although no detailed information is available on this point.

the board must compile statistics of the disputes with which it deals either *ex officio* or at the request of the parties, and of their nature and results, and must transmit them to the Department of Industrial Labour.

It should be noted that the Government may call upon the conciliation boards to act not only as mediators in disputes between employers and workers, but also as advisory bodies on labour questions. The boards are expressly forbidden to carry on any other form of activity; should they do so, or should their services not be required, they may be dissolved.

It is evident from the provisions described above that the system of conciliation boards is entirely voluntary. The Order neither lays down an obligation to submit disputes to the board nor makes compliance with their decisions compulsory, although the power to publish the minutes of the proceedings and the decisions of the board may sometimes exercise certain moral pressure on the parties. The prohibition of strikes mentioned above, and the provision for arrest for breach of contract contained in section 2393 of the Civil Code may also have the effect of encouraging resort to conciliation and arbitration machinery.

Lack of information makes it impossible to ascertain the results achieved by the conciliation boards. They appear, however, to have dealt only with disputes in a very limited sphere — notably in agriculture near Lisbon ¹.

It remains to be seen whether the reform of the constitution now being planned will also extend to labour law and bring with it a revision of the legislation on conciliation and arbitration in collective disputes.

On 28 May 1932 the Government published the preliminary draft for a new constitution, upon which it invited public discussion. This draft contains the following two clauses capable of affecting the future development of conciliation and arbitration machinery in Portugal :

Section 40. — All disputes concerning collective conditions of employment shall be decided by special tribunals organised as arbitration courts.

Section 41. — In the economic relations between capital and labour, any suspension of work by either party with a view to enforcing its interests is prohibited.

It would thus appear that the new Government intends to

¹ MINISTERIO DE FOMENTO : *Agencia Oficial de Trabalho e Juntas de Conciliação*, 1912.

maintain the prohibition against strikes and lock-outs, and to introduce compulsory arbitration in collective labour disputes.

The following table gives statistics of strikes in Portugal, showing their number, results, and in most cases their causes. The official statistics, however, cover the years 1903 to 1912 only ¹, and there are no really reliable sources of information. The tables have been compiled from particulars published in Professor Fernando Emidio da Silva's work *As Greves* and from figures established by some of the organisations concerned ².

Year	Number of strikes	Number of defensive strikes	Causes				Results		
			Sympathetic strikes	Hours of work	Wages	Miscellaneous	Successful	Compromise	Unsuccessful
1903 . . .	11	2	4	—	3	2	3	3	3
1904 . . .	3	—	1	—	2	—	—	—	—
1905 . . .	12	4	—	3	5	—	6	1	1
1906 . . .	6	1	1	1	2	1	2	2	—
1907 . . .	13	2	1	2	3	5	2	5	2
1908 . . .	11	1	1	1	1	7	4	—	2
1909 . . .	17	3	3	—	6	5	12	—	2
1910 . . .	85	1	4	17	47	13	36	36	6
1911 . . .	162	4	39	21	64	37	73	43	21
1912 . . .	35	2	12	4	3	14	1	13	7
1913 . . .	19	1	2	4	5	5	5	8	3
1914 . . .	10	—	1	2	2	5	2	4	1
1915 . . .	15	1	2	7	5	1	4	9	2
1916 . . .	7	—	—	3	3	1	3	4	—
1917 . . .	26	2	—	9	12	2	14	10	2
1918 . . .	11	—	1	3	6	1	3	4	3
1919 . . .	21	—	8	2	7	3	7	8	3
1920 . . .	39	2	6	3	19	9	9	26	4
1921 . . .	10	—	2	—	4	4	2	4	2
1922 . . .	22	—	7	3	11	1	10	6	2
1923 . . .	21	1	5	2	7	6	4	7	3
1924 . . .	25	—	4	4	10	7	5	11	4
1925 . . .	10	—	4	3	2	1	4	3	—

This table shows an increase in the number of strikes since 1910, which may be attributed to the following causes :

- (a) The recognition by the Republican Government of the right of combination and the legality of strikes and lock-outs.
- (b) The vigorous propaganda carried on by the organisation of the labour movement, which was initiated by the 1909 congress and strengthened by the resolutions adopted at

¹ *Boletim do Trabalho Industrial*, No. 81. Bento CARQUEJA : *Economia Política*, Vol. V, p. 308.

² M. J. de SOUSA : *O Sindicalismo em Portugal*, p. 67.

the 1911 congress, which laid down among others the principle that arbitration should be refused in whatever form ¹.

- (c) The spread of the labour movement in the country districts. The first land workers' congress held in Evora in 1912 was attended by thirty-nine unions, and the second, held in the same town in April 1913, by seventy unions.
- (d) The unfavourable change in living conditions from 1910 onwards, and particularly from the beginning of the war, which gave rise to a number of movements aiming at improving wages. Most of the strikes arose out of claims for higher wages ; from 1910 to 1925, 41.2 per cent. of them were successful, 14.3 unsuccessful, and 44.4 ended in a compromise.

According to an enquiry carried out by Professor Bento Carqueja ¹ into the causes of strikes during the years 1903 to 1912, the number of workers affected by disputes arising out of wage demands during these ten years was 85,560, and the number of working days lost 725,000.

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¹ Bento CARQUEJA : *Economia Política*, Vol. V, p. 311.

GREECE

§ 1. — Economic Background and Development ¹

Since the conclusion of the Treaty of Lausanne in 1923, the territory of Greece has an area of 130,000 square kilometres. The 1928 census showed a total of 6,205,000 inhabitants, which corresponds to a density of population of 47.66 inhabitants to the square kilometre. From 1921 to 1926 1,500,000 refugees and exchangeable persons entered Greece, while 354,000 exchangeable Turks left the country ².

Greece is essentially an agricultural country, and in 1928 the rural population represented about 57 per cent. of the whole. In the same year the active population, classified according to occupations, was distributed among the main branches of industry as follows : agriculture, 53.7 per cent.; industry, 15.7 per cent. ; commerce, 7.6 per cent.

Although agriculture is still the most important activity carried on in Greece, industry is making rapid strides. As early as 1920 the census of industrial undertakings revealed the existence of 33,811 undertakings employing 154,633 persons, of whom about 100,000 were wage earners. The main industries are the food and drink industries (milling, oil and distilling), textiles, and mining and quarrying.

On the basis of various legislative measures concerning trade associations, the first of which dates from 1914, both employers' and workers' organisations have reached an advanced stage of development.

The workers' unions are grouped into various important trade federations. The General Confederation of Labour, founded by the Socialist Party in 1918, is the most representative of the Greek workers' organisations. In June 1930 it had a membership

¹ A. ANDRÉADES : *Les effets économiques et sociaux de la guerre en Grèce*. Publication of the Carnegie Foundation. Presses universitaires de France, Paris.

² *The Statesman's Yearbook*, 1930, and MINISTRY OF NATIONAL ECONOMY OF THE GREEK REPUBLIC : *Statistique générale de la Grèce*, " Recensement de 1920 ". LEAGUE OF NATIONS : *International Statistical Yearbook*, 1929.

of 90,000, but a minority group of radical tendencies has recently seceded from it.

In addition to the trade union federations there are a certain number of local organisations, called "workers' centres".

The employers' associations also form several large central organisations. Among them may be cited by way of example the Association of Greek Manufacturers and Craftsmen, the Federation of Tobacco Traders, the Greek Commercial Union, the Greek Shipowners' Union, etc. In 1929 there were chambers of commerce and industry in sixteen towns.

As regards crafts, the State provided, by an Act promulgated in 1925, for the creation of chambers of trades and crafts which now operate in six towns. There is also a Greek Confederation of Trades and Crafts, which comprises about 500,000 members and has a large number of organisations affiliated to it throughout the country. In tendency it is definitely conservative.

Chambers of agriculture similar to the trade chambers have also been set up on a statutory basis ¹.

Strikes first began to be frequent in Greece about the year 1879. At that time, however, large-scale industry was still in its infancy; and it was not until it had reached a more advanced stage of development that it became necessary to take suitable legislative action. The first labour laws, adopted from 1910 onwards, were designed for the general protection of labour; but even at that time attempts were made not only to secure better working conditions, but also to provide for the settlement of any disputes that might arise.

The development of this legislation was somewhat interrupted by the Balkan wars of 1912-1913, but was resumed after 1914. The first social insurance Acts were promulgated during 1914-1915; Act No. 281 of 21 June-4 July 1914 laid down in detail for the first time the regulations governing the right of association in trade unions.

From 1915 onwards, however, strikes became more and more frequent and serious. They increased particularly after the foundation of the Confederation of Labour in 1918, and this gave rise to new legislative measures. In 1920 the Trade Union Act was amended and supplemented, and various other important Acts were promulgated, notably that concerning the right to dispose of one's labour, which made "intimidation" an offence.

¹ *Freedom of Association*, Vol. IV, pp. 305 et seq.

Until 1926, however, no legislative measures were adopted to secure the peaceful settlement of collective disputes. During the years preceding the adoption of the Act on collective disputes the latter were settled as far as possible by the administrative authorities ; but their intervention as arbitrators was unsupported by legal penalties and was therefore of very limited scope, being effective only in settling disputes in which the differences between the parties were inconsiderable.

It was therefore the necessity of introducing a more effective system of arbitration that inspired the Legislative Decree respecting arbitration and conciliation in disputes to which salaried employees and wage earners are parties, dated 21 April 1926, which is at present in force ¹.

§ 2. — The System in Force

The Legislative Decree of 21 April 1926 concerns collective disputes as defined in its opening section, and covers both wage earners and salaried employees. The authorities competent to deal with the disputes covered by the Decree are the Governors-General of Macedonia and Thrace, prefects and labour inspectors within their respective jurisdictions and, for disputes in general, the Minister of National Economy.

CONCILIATION

Provision is made for the setting up in every collective dispute of a special conciliation committee, consisting of the labour inspector for the district, who acts as chairman, and of a representative of a local employers' association and a representative of the workers' or employees' organisation concerned. Detailed regulations are laid down for the manner in which each of these members is to be appointed, and special provision is made for cases in which the dispute affects a liberal profession. If the dispute arises in Athens or the Piræus, the committee is appointed by the Minister of National Economy and must have as its chairman a high official of the Labour and Social Welfare Section.

Membership of a conciliation committee, as of every kind of committee set up by the law, is open only to Greek citizens who

¹ *Legislative Series*, 1926, Gr. 3.

have attained their twenty-fifth year and are in full possession of their civil and political rights. Members of the committee are entitled to compensation for any wages or salary lost. The performance of their duties is compulsory, and any person who fails to fulfil them without good reason or who divulges secrets that have come to his knowledge during the performance of his duties is liable to imprisonment.

The conciliation committee is set up by the competent authority either *ex officio* or at the written request of the parties. The parties are summoned immediately, and may appoint representatives instead of appearing in person.

If the conciliation proceedings are successful, the settlement reached must be recorded in a report signed by the members of the committee and the parties concerned, and entered in a special register. The settlement has the force of a collective agreement between the parties.

If the parties refuse to submit to conciliation, or if the conciliation proceedings break down, the committee draws up a report which is transmitted either to the Labour Arbitration Board or, if the dispute concerns salaried employees, to the Ministry of National Economy (Labour and Social Welfare Section).

ARBITRATION

The Legislative Decree of 1926 institutes two distinct forms of arbitration : a voluntary system for collective disputes between employers and workers, and a compulsory system for collective disputes affecting salaried employees.

Voluntary arbitration in disputes concerning workers is effected by one of the six permanent arbitration boards set up by the law. Each board is appointed for a period of two years, and consists of a judge who acts as its chairman, two employer and two worker members. These four delegates are chosen by lot from a list of persons nominated by the chambers of commerce and industry on the one hand, and the competent workers' organisations on the other, each list being submitted beforehand to the opposite side, who may exercise a right of challenge.

When the arbitration board is informed, through the conciliation committee's report, of a collective dispute, it convenes the parties, who may choose accredited delegates to represent them. Before trying to settle the dispute by means of an award, the arbitration board must make a final attempt to bring about a

settlement through agreement. If this is unsuccessful, the board proceeds to investigate the case. For this purpose it may call witnesses and hear experts, examine accounts and other documents, and hear the parties themselves. The award requires a majority vote for its adoption, and is subsequently recorded and made public. The award is only binding if both parties accept it as such either beforehand or within three days after it has been issued. If accepted, the settlement has the force of a collective agreement for a period of not less than three months.

Disputes between employers and salaried employees are dealt with by the permanent arbitration board set up in Athens. This board sits under the chairmanship of a judge of the Court of Appeal, and is composed of a jurist, two representatives of employers' associations specifically mentioned in the Act, and two representatives of salaried employees' organisations. Detailed provisions are laid down for the nomination of the various members of the board.

Disputes concerning which the competent Minister has received the prescribed report from the conciliation committee are referred by him to the arbitration board for settlement if he thinks fit. Before coming to a decision, the arbitration board must thoroughly investigate the causes of the dispute. Its procedure is the same as that prescribed for the workers' arbitration board.

The parties are entitled to give their views on the dispute to the arbitration board through a delegation of not more than three persons. Minutes are taken of the discussion and the proceedings of the board.

Awards are issued by a majority vote, and must be supported by at least three votes. They have the force of a binding collective agreement between the parties, which may be altered only after a period of three months, and in accordance with the prescribed procedure. Finally, any party who fails to comply with the decisions of the board must compensate the injured party in such measure as the law prescribes. Any agreement contrary to these provisions is null and void.

OPINIONS

Speaking on his political programme at Salonika in 1928, Mr. Venizelos gave some indication of the chief points in his labour policy ¹.

¹ *Messenger d'Athènes*, 23 July 1928.

Although the worker's right to strike and the employer's corresponding right to declare a lock-out is recognised, it is essential (he said) to avoid such disputes whenever possible, and appropriate legislative measures should be adopted to this end. Mr. Venizelos foreshadowed the adoption of "a form of procedure similar to that introduced by the Covenant of the League of Nations for disputes between countries". Hence it should be made compulsory for the parties to inform the Minister of National Economy of their dispute before having recourse to a strike or lock-out. The Minister would then have to investigate the dispute, embody his conclusions in a report and make them public.

The speaker considered that this form of procedure "would secure, in a great many cases at least, the satisfaction of legitimate claims before relations between workers and employers became strained, or would at any rate prevent the occurrence of a strike or lock-out".

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YUGOSLAVIA

§ 1. — Economic Background and Development

The Kingdom of Yugoslavia, which, in addition to the former Kingdom of Serbia, comprises Montenegro and part of the former Dual Monarchy of Austria-Hungary, has an area of 295,000 square kilometres. Of its thirteen million inhabitants more than four-fifths are dependent on agriculture. The majority of the remaining fifth are occupied in handicrafts. Five per cent. of the population are engaged in the public services and the professions.

Yugoslavia is therefore a predominantly agricultural country. Except in Slavonia and certain parts of Croatia the agricultural land consists almost exclusively of small or medium-sized peasant holdings, worked for the most part by the owner and his family. This fact explains the absence of special legislation determining working conditions in agriculture ; 30.5 per cent. of the territory of Yugoslavia consists of forests, so that forestry is of importance as well as agriculture. Approximately fifteen million cubic metres of wood are produced annually, and the number of sawmills is considerable.

The workers' movement in the old Serbia dates from the foundation of friendly and mutual improvement societies in the eighties of last century. After 1900, workers' associations were formed which accepted the principle of class warfare. After 1905 the organisation of the trade associations was strengthened and the movement reached its peak in 1921. When the State Constitution was repealed on 6 January 1929 the total membership of the workers' unions affiliated to the Federation of United Trade Unions was 36,044. The present membership is unknown. The Union of Commercial and Industrial Employees, which on 1 January 1931 had 22,000 members, is not a militant trade association.

The Federation of Industrial Corporations is an employers' association organised on a national scale ¹.

¹ Cf. *Freedom of Association*, Vol. IV, pp. 317 et seq.

In the old Serbia as early as 1847 an Order concerning guilds was in force which did not deal with the regulation of collective labour relations but was in fact a continuation of the mediæval regulations concerning guilds. It was only in 1904 that preparations were made for the promulgation of up-to-date social legislation. An Industrial Bill was drafted that included provisions for the settlement of labour disputes. But this Bill did not find favour with the employees, who were alarmed in particular at what they considered to be the inadequate rules of procedure of the proposed Labour Courts. A social-political writer (Dragicha Laptchewitch) expressed himself as follows : " The machinery proposed in this Bill resembles a court, but in practice its activities are confined within such narrow limits and the appointment of the members is so regulated that the employer may be certain beforehand that he will lose his case." The Bill was re-drafted several times. The jurisdiction of the Labour Courts, which by the Bill of 1904 was confined to the employers and workers belonging to the guilds, was extended to all industrial workers. According to the preamble of a second Bill dated 1907, this was necessary " because the freedom of a large number of industries had been proclaimed ". In 1910 an Industrial Act¹ based on the preparatory labours of previous years was finally passed. For disputes between individuals this Act set up a Labour Court consisting of an equal number of employers' and workers' representatives. A neutral person was designated as chairman. An Order of 16 April 1912 deals with the procedure of the Labour Courts, and *inter alia* with their jurisdiction in collective disputes.

Under this Order collective disputes may also be referred to Labour Courts on the application of one of the parties. The Court must without delay fix a time-limit and attempt to bring about an amicable settlement. If the attempt at conciliation fails, the Court terminates the proceedings and publishes the facts of the case and the result of the negotiations in the daily newspapers. The procedure is the same if one of the parties refuses to take part in the proceedings.

The Labour Courts which, in so far as the parties voluntarily agreed to accept their mediation, were also intended to function as conciliation boards, were to be attached to the communal courts. But the Act was put into force only in a few communes, owing to the outbreak, shortly after its promulgation, of the

¹ *Bulletin of the International Labour Office*, Basle, Vol. VI, 1911, p. 191.

Balkan war, followed, after a short interval of peace, by the war of 1914.

Although it was used in settling a few disputes between individuals, it was never of any importance in collective disputes.

The Act remained in force in the old Serbia after the war. Only since 9 March 1932 — date of the coming into force of the new industrial law of 5 November 1931¹ — the provisions concerning the industrial law of 1910 were abolished also for old Serbia. The new industrial law states that, for the whole territory of the Kingdom, Labour Courts must be set up and entrusted to these courts the negotiating and the decision of individual disputes (section 344).

In parts of the country outside old Serbia the history of the law on conciliation and arbitration varies. Austrian laws were in force in the former Crown Land of Carniola and the parts of Steiermark and Carinthia that were incorporated in Yugoslavia, and the reader may therefore be referred to the study on conciliation and arbitration in Austria. Conditions were similar in Bosnia and Herzegovina, where Austrian laws were gradually introduced by means of Orders. In the former Hungarian territory, in which Hungarian legislation was in force, scarcely any machinery for the settlement of collective disputes had been developed. In the Kingdom of Montenegro such machinery was altogether absent.

Without modifying the laws in force in the various parts of the Kingdom, the Yugoslavian State Constitution of 28 June 1921 declared in the chapter headed "Social and Economic Clauses" that it was "the duty and right of the State, in the interest of the community and in virtue of the law, to intervene in a spirit of justice in the economic concerns of the citizens in order to settle economic differences between them" (Article 26). Although this clause had no direct effect on the administration of the law and was subsequently repealed together with the other clauses of the State Constitution (see above), it was nevertheless of importance because it served as a guiding principle in framing special Acts. To carry out this principle of the Constitution concerning State intervention in the economic concerns of the citizens, more particularly in the event of economic disputes, three bodies were created: the labour inspectorate, employees' councils and employees' representatives. These bodies are aided, according to the new industrial law of 5 November 1931, by the guilds.

¹ *Legislative Series*, 1931, Yug. 4.

§ 2. — The System in Force

GOVERNMENTAL CONCILIATION AND ARBITRATION MACHINERY

Conciliation and Arbitration by the Labour Inspectors

The Act of 20 December 1921¹ establishes a uniform system of labour inspection throughout the Kingdom, to exercise direct supervision over the administration of the legislative provisions relating to the protection of workers, irrespective of whether the latter are employed in private or State undertakings (section 1). The only exceptions are State railway undertakings and military undertakings in which civilian workers are not employed. Special provisions are to be issued for forestry and mining, which are under separate Ministries.

The labour inspectorate is divided into two sections. A central labour inspectorate under a chief labour inspector constitutes the supreme central authority. The chief inspector is established in Belgrade and acts as technical adviser on social questions to the Ministry of Social Affairs. The Act is enforced by the provincial labour inspectorates.

According to section 9 (6) of the Act, one of the duties of the provincial inspectors is "to investigate the causes of industrial disputes between employers and workers, intervene in disputes on the application of either party". The provincial inspectors are required to keep an exact record of all cases of collective labour disputes and to compile annual statistics. To assist them in this duty the owners of undertakings are required to supply them with a detailed report concerning every strike and lock-out which occurs (section 13 (5)). Contraventions of these provisions are punishable by penalties not exceeding 300 dinar (section 23 (1)).

Participation of the Employees' Councils in Settling and Deciding Collective Disputes

The Act of 28 February 1922² establishes employees' councils for the wage-earning and salaried employees in all undertakings carrying on handicrafts, commerce, transport and similar activities. They consist of 30 to 60 members, and all employees, irrespective of sex, are eligible for membership. The business of the councils

¹ *Legislative Series*, 1921, Part II, S.C.S. 2.

² *Legislative Series*, 1922, S.C.S. 1.

is directed by a committee defined by the Act as an executive body. The members and substitute members of this executive committee are elected by the general meeting of the council (section 51). One of the duties of the executive committee is "the nomination of members to co-operate in the settlement of disputes between employers and employees, in the conclusion of collective contracts and in the making of various enquiries" (section 54, f). Under section 37 (4) of the Act the employees' councils are required to participate in the conclusion of collective agreements and the settlement of disputes between employees and employers. Their activities are confined to conciliation, for the councils represent only the workers and are therefore not well qualified to give impartial decisions. The labour inspectors, on the other hand, are empowered to issue awards which are directly enforceable by the competent authorities.

The Prevention of Disputes

The principal duty of the employees' councils is to settle disputes that have actually arisen, but before that stage is reached an opportunity is provided to arrive at an agreement by direct negotiation between the employers and workers. With this object in view the Act of 28 February 1922 empowers the workers to elect employees' representatives.

According to section 108 of the Act, the wage-earning and salaried employees in all undertakings carrying on handicrafts, commerce, transport, mining and similar activities are empowered to elect employees' representatives. It falls within the duties of these representatives to endeavour to maintain good relations between employers and their employees and to mediate in wage disputes. If the outbreak of a strike is threatened in consequence of a dispute concerning wages, the representatives must appeal for the intervention of the competent State authorities. Although section 109 of the Act does not indicate the authorities in question, it appears from section 118 that they are the labour inspectors. Reference of a dispute to the labour inspectors does not, however, preclude its consideration by the employees' councils as well. Some cases may be cited in which the employees' councils intervened in a dispute only after an attempt at conciliation by the labour inspector had failed (e.g. the woodworkers' strike in the Sarajevo district of the labour inspectorate, October 1927). The compulsory guilds of commerce and industry extending over the whole Kingdom are also, according to the sections 354-390 of the

new industrial law of 5 November 1931, competent in matters of conciliation. They have besides to see that between employers and their assistants, as also between the other economic and educational associations, good order is maintained (section 362 (1)(3)).

Conciliation under the Terms of Collective Agreements

In Yugoslavia, as in other countries, it was the workers in the printing trade who first succeeded in having conditions of employment determined by collective agreement. These collective agreements also contained provisions concerning conciliation and arbitration. In the former Austrian and Hungarian territories many other trades have also established conciliation and arbitration machinery by collective agreement. Thus in 1912 a permanent committee for the settlement of wage disputes, with an equal number of employers' and workers' representatives, was set up as a result of a strike in the tailoring trade in the Agram (Zagreb) district. In the old Serbia such machinery is the exception.

In every case disputes are referred to bodies set up by agreement between the parties before use is made of governmental machinery. This principle is clearly laid down in a provision of the Workers' Protection Act of 1922, according to which the employees' representatives are to appeal for the intervention of the State authorities when a dispute has not been settled by other methods and a strike is threatened.

§ 3. — Results

The following table is taken from the statistics concerning strikes issued by the Labour Inspectorate of the Kingdom of Yugoslavia :

Year	Number of				Amount of wages lost (in dinar)
	Undertakings affected	Workers affected by strikes	Working days lost	Working hours lost	
1923	—	13,232	159,300	1,282,248	8,202,692
1924	45	5,155	76,337	622,914	3,860,929
1925	44	7,483	110,600	884,800	3,680,022
1926	46	10,979	157,485	1,287,818	7,578,741
1927	78	7,588	239,183	1,932,057	8,695,125

The reports of the inspectors also contained particulars concerning the effects of the different methods of conciliation employed. In 1927 seven strikes occurred in the Belgrade district of the labour inspectorate. In all of these an agreement between the parties was brought about by the intervention of the labour inspector. In the same year six strikes occurred in the Vojvodina inspection district, in all of which the employees' council and the labour inspector intervened. In the Agram district nine out of fifteen disputes were settled by the labour inspector, four by the police authorities and two without outside intervention. Of seven strikes in the Spalato (Split) district during the same year one was settled by the employees' council, three by the labour inspectorate and three by these two bodies jointly. In the Nisch district (old Serbia) no strikes were reported during 1927. The most important strike of the year was that of the woodworkers in the Sarajevo district, which has been mentioned elsewhere. A settlement was attempted in turn by the inspector of labour, the employees' council, the police authorities and a representative of the Ministry of Social Affairs and was finally brought about by the last-mentioned authority.

From this information contained in the reports it is clear that of the different bodies concerned with conciliation in disputes the labour inspectors came first and the employees' councils second in order of importance. No particulars are available concerning the share taken by the workers' representatives in preventing the use of force. The same is true as regards the institutions set up by the new industrial law.

§ 4. — Summary

Apart from the labour courts, competent only in the old Serbia, under the provisions of the Industrial Act of 1910, for the settlement of collective disputes Yugoslavia possessed until the proclamation of the new industrial law of 5 November 1931 three kinds of bodies for the prevention and settlement of collective labour disputes : the employees' representatives, the employees' councils and the labour inspectors. Employees' representatives are not appointed in all undertakings. Their duties are confined to the prevention of disputes. The most important body for the settlement of disputes is the labour inspectorate. It is assisted by the employees' councils, which in some cases also take independent

action with a view to settling disputes. When the above bodies fail to bring about an agreement, the Ministry of Social Affairs appoints a special representative to attempt a settlement. The reference of disputes to these bodies does not in every case preclude intervention by the police authorities. According to the proclamation of the new industrial law, the Labour Courts are no longer competent to negotiate in collective disputes. The other bodies competent for such disputes are from now onwards aided by the guilds throughout the Kingdom.

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BULGARIA

§ 1. — Economic Background and Development¹

The territory of Bulgaria extends over 103,000 square kilometres. According to the census of 1930, [the country had 5,384,900 inhabitants, the rural population amounting to almost 80 per cent. of the total. Bulgaria is therefore essentially an agricultural country, the majority of whose peasants are small proprietors.

As far as industrial production is concerned, handicrafts still play an important part. Nevertheless, the State encourages development of large undertakings: there were 1,541 of these in 1922, and in 1929 the workers numbered 73,600, of whom over 23,000 were engaged in the tobacco and nearly 15,000 in the textile industry. Mining industries have also a certain importance, and occupied more than 8,000 workers in 1929.

The principal branches of Bulgarian industry are tobacco, textiles, mining, foodstuffs and metals.

The first Bulgarian occupational organisations² were those of handicraftsmen, many of which arose on the basis of the Act of 1910 on the organisation and protection of crafts. Local associations were formed and these were grouped in a Central Union of Organisations of Handicraftsmen in Bulgaria.

The employers began to organise in 1903. In that year they founded the Union of Bulgarian Manufacturers, which included more than 580 undertakings in 1929. After the war various other employers' organisations were founded, such as the Association of Joint Stock Companies, the Union of Bulgarian Traders, the Millers' Association, etc.

Workers' trade unions also made their appearance at the

¹ According to a private report on arbitration and conciliation in labour disputes in Bulgaria, submitted to the International Labour Office by Mr. Dimitri Nikoloff, former head of the Labour Section at the Ministry of Commerce, Industry and Labour.

² Cf. *Freedom of Association*, Vol. IV, p. 342 et seq. See also various notices in *Industrial and Labour Information*.

beginning of the twentieth century, and in 1913 they constituted two main groups :

(1) The General Federation of Trade Unions, a body with revolutionary tendencies, which was much the more considerable (having more than 30,000 members), but which was dissolved by the Government at the same time as the Communist Party as a result of the Agrarian-Communist revolt in 1923 ;

(2) The Bulgarian and General Trade Union Federation, which united the reformist Socialists. This body had only some 2,000 members in 1929, but is developing to a certain extent since the dissolution of the extremist federation.

There have been various attempts to found agricultural workers' unions.

The occupational organisations of State employees and workers in the public services are also associated in a federation of unions (30,000 members in 1925).

Attempts made since 1923 by the public authorities and large industrial leaders have led to the creation of several non-political associations, but these have only a small number of members.

In the handicraft trades it was, during the greater part of the nineteenth century, the duty of the guilds to decide differences of opinion between employers and their assistants. The disputes were submitted to the arbitration of the president of the guild, whose decisions were enforceable by law and were not liable to appeal.

After the proclamation of the independence of Bulgaria in 1878, guilds and handicrafts began to decline. The State therefore passed repeated legislative measures in an effort to put fresh life into the organisation of trades according to the new and modern principles. This was the spirit which inspired the Acts of 1898 and 1903 on handicraftsmen's associations.

The Act of 1903 created three types of conciliation commissions composed of five members — a president, two employers and two workers, the president, however, being chosen from among employers.

This Act was repealed by the Act of 1910 on the organisation and protection of crafts, which was supplemented by regulations instituting a crafts arbitration court. This court was to function in conjunction with each association of handicraftsmen. It was presided over by the local magistrate, the other two members being elected, one by the employers, the other by the foremen of the trade. The court did not decide differences until it had made

two preliminary attempts at conciliation. It then gave decisions enforceable by law but subject to appeal. The Act compelled the handicraftsmen to have recourse to the arbitration procedure in all disputes relative to its terms, but the organisation of the court did not give it competence in collective disputes ; it could only give decisions on individual cases.

As time went on it was used less and less. At present, though the Regulations of 1910 have not been repealed, the arbitration court has completely ceased to function.

In industry, which only began to develop about 1890, methods of settling labour disputes are still in course of development.

At first the disputes were of little importance and no attempt was made to compromise on a solution ; but when the Socialist movement began to spread, disputes grew increasingly common and recourse was had more and more frequently to strikes. The workers then began to set up strike committees which were charged with negotiating agreements with the employers.

Nevertheless, it was felt that a neutral organisation capable of equitably deciding differences was necessary ; an investigation into foreign legislation on the settlement of labour disputes was undertaken, and a Bill was drafted on the private initiative of the Union of Bulgarian Manufacturers, which has been occupying itself with labour legislation since 1905.

The proposal was to establish a system of compulsory conciliation and arbitration. Differences were to be submitted to the local magistrate, who was then to make a preliminary attempt at conciliation, and, if the parties concerned could not come to a settlement, was to request them to appoint arbitrators. But this draft Bill was not even considered by Parliament. On the other hand, mediation in collective labour disputes was in 1919 entrusted by the competent ministry to the labour inspectors. At first both employers and workers showed a lack of confidence, but experience has shown that the inspectors are carrying out this work efficiently.

Besides this scheme, the Act of 1925 on employment exchanges and unemployment insurance provided for the establishment at each exchange of an arbitration court, not unlike that of the handicraftsmen, but with this difference, that its members are appointed on the proposal of the employers' and workers' associations respectively. This court is competent to decide individual disputes on work and wages arising out of placing, but cannot recognise collective disputes.

There is thus at present no legislation of general validity on conciliation and arbitration in collective labour disputes in Bulgaria.

§ 2. — Strike Statistics

The following figures show the number of strikes, strikers and working days lost during the years 1922 to 1929 ¹ :

Year	Strikes	Strikers	Working days lost
1922	190 ¹	15,361	297,230
1923	59	2,640	22,600
1924	—	—	—
1925	3	83	213 ²
1926	3	372	1,806
1927	23	2,708	57,196
1928	21	414	2,382
1929	39	20,081	378,236

¹ Three lock-outs (35 workers and 546 working days lost) should be added to these figures.

² There is no information to hand concerning one undertaking.

The results of these strikes were extremely varied. In 1922 some 15 per cent. of the strikers were completely successful and 52 per cent. partially so ; 33 per cent. therefore failed. In 1923 51 per cent. were unsuccessful while 24 per cent. were completely successful. In 1927 74 per cent. of the strikers failed and only 9 per cent. obtained complete satisfaction of their demands.

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¹ Cf. *Statistical Yearbook of the Kingdom of Bulgaria*, 1926, 1927, 1928, 1929 and 1930.

RUMANIA

§ 1. — Economic Background and Development

Rumania is one of the States that were entirely remodelled at the end of the war. To the area of about 138,000 square kilometres with a population of about seven and a half millions that constituted the old Rumania, the Peace Treaties of 1919 added territories greatly surpassing the old Rumania both in area and in population. In 1928 the population was about 17.9 millions, and the area about 295,000 square kilometres ¹.

Even pre-war Rumania was rich in natural resources, but despite this fact its industries were in a backward condition and were dependent to a great extent upon foreign capital. In the former Hungarian territories which to-day form part of the Kingdom of Rumania the workers' movement in 1919 was more highly developed than in Rumania proper, as is still apparent from the statistics of organised workers in the different districts. In 1929 the figures were as follows :

Transylvania :	139	trade unions with a membership of	14,532
Pre-war Rumania :	50	„ „ „ „	10,696
Banat :	38	„ „ „ „	10,122
Bukovina :	64	„ „ „ „	5,569
Bessarabia :	4	„ „ „ „	682

The Union of Metal and Chemical Workers with 11,198 members is numerically the strongest. The reformist unions united in 1926 to form the General Confederation of Labour. The central organisation of the revolutionary unions is the General Unitary Trade Union Council. The tendency among workers to combine, which was already clearly apparent before the war, did not lead to similar combinations among the employers until 1919, as the interests of the employers were already represented by the Chambers of Industry and Commerce ². It was only as a result of post-war strikes, in particular the general strike of 1920, that the employers

¹ *Annarul Statistic al Romaniei 1928*, p. 16. The last census in Rumania was taken in 1913 and the figure for the 1928 population is an estimate.

² *Freedom of Association*, Vol. IV, p. 374.

formed their own associations. These are affiliated to the General Federation of Rumanian Manufacturers, which has its headquarters in Bucarest.

In spite of the vigorous industrial activity that before the war was already a notable feature of the former Rumanian Kingdom, no legislation was enacted on conciliation and arbitration in collective labour disputes. The series of strikes in 1919 and 1920, which gave a fresh impetus to the development of trade associations, also impelled the Government to press forward with the preparation of a Bill on conciliation and arbitration. During the parliamentary debates that preceded the passing of this measure, the Government spokesman stated that in essentials it was modelled on similar measures passed abroad and took account of the experience of these countries. He pointed out that, owing to the "faulty and insufficient organisation of the general body of workers" as compared with other European countries, the Government in framing the legislative provisions in question had decided to proceed with caution. In the words of the preamble, "countries in a less advanced stage of economic development cannot afford the luxury of applying theories that are accepted in the more highly developed States"; but despite these considerations the Act, in Chapter I, guarantees the "liberty to work . . . to every person within the limits of existing laws and regulations and also of this Act". The Act is based on the conception that the provisions concerning conciliation and arbitration procedure, which are contained in Chapter II, constitute a restriction of the general principle of liberty to work. These provisions establish a unified system of conciliation and arbitration procedure in collective labour disputes for the whole Kingdom.

§ 2. — The System in Force

CONCILIATION AND ARBITRATION UNDER THE ACT OF 4 SEPTEMBER 1920 CONCERNING THE REGULATION OF COLLECTIVE LABOUR DISPUTES¹

The part of the Act which deals with collective stoppages of work defines the term as "a stoppage of work on the part of not less than one-third of the total number of workers in an industrial

¹ *Legislative Series*, 1920, Rum. 4.

or commercial establishment or of the number of workers employed in one or more departments of the said establishment". Section 4 declares any collective stoppage of work to be unlawful, unless conciliation proceedings have been exhausted, and imposes severe penalties on offenders (1 month's to one year's imprisonment and fines of 50 to 20,000 lei : sections 27 and 28). These provisions apply to all undertakings that regularly employ not less than ten workers. The following principles are laid down with regard to conciliation.

I. Conciliation proceedings are opened by a commission composed of representatives of the employers and workers concerned and a representative of the Ministry of Labour. If the dispute is confined to a single undertaking, the members of the commission who represent the workers are elected directly by the workers employed in the undertaking. If it involves several undertakings, the workers of these undertakings indirectly elect delegates to serve on the commission.

The Trade Unions Act of 1927¹ makes the provisions concerning the appointment of delegates to conciliation boards more favourable to the unions by stipulating that representatives of recognised trade associations who are not employed by the undertaking affected by the dispute may also be appointed as delegates. The exercise of the right is, however, made subject to the following conditions :

- (a) Not less than one-third of the workers concerned in the dispute must be members of the industrial association in question ;
- (b) A majority of the workers concerned in the dispute must accept the delegate or delegates of the industrial association.

When a dispute arises the following procedure must be adopted. The subject of the dispute and the result of the election of representatives have to be communicated in writing to the other party. Whether or not the dispute involves a strike or lock-out, the employer or head of the undertaking, within not more than 24 hours from the time when he receives or makes the above communication, must notify the district inspector of the Ministry of Labour in whose area the undertaking is situated of the outbreak of the dispute. Failure to send this notification is punished by heavy fines, but, since the inspectorate may also be notified of the

¹ *Legislative Series*, 1927, Rum. 3.

dispute by the workers' delegates, it does not affect the proceedings themselves. The Ministry of Labour may also initiate conciliation proceedings *ex officio* through its competent officials. With regard to the detailed proceedings to be followed, the Act makes few stipulations. Negotiations may be opened at the offices of the nearest trade guild or elsewhere and are directed by the representative of the Ministry. The result of the proceedings has to be recorded in minutes, which have to be signed by all the parties present.

If an agreement is reached, the decision arrived at has likewise to be recorded in the minutes and is binding upon the employers and workers in the undertakings affected by the dispute (section 14). Observance of the agreement is enforced by section 32 of the Act, which provides that "failure to carry out the provisions laid down in the minutes of conciliation. . . shall constitute sufficient reason for the termination of the contract of employment and shall entitle the injured party to claim damages". Should failure to carry out the above provisions result in one of the offences enumerated in Part 4 (Penal Provisions), such as a collective stoppage of work prohibited under the Act, the offenders become liable to the penalties provided in that part of the Act.

II. If no agreement is reached by conciliation, the parties may refer the dispute to an arbitration commission. There are no formal provisions governing the opening of arbitration proceedings. According to a judgment given in 1929 (cf. below, § 3), a request for arbitration is valid if it is signed by an absolute majority of the workers employed in the undertaking affected by the dispute.

Arbitration is compulsory in all State, departmental and communal undertakings and institutions, and in undertakings the closing down of which would endanger the public welfare. In the case of the latter undertakings the method of enumeration is followed and arbitration made compulsory only in the following, explicitly mentioned in the Act :

- (a) undertakings for transport by land, water or air, including the persons employed in loading and unloading ;
- (b) petroleum wells and distilleries, coal mines, and undertakings for the utilisation of natural gas ;
- (c) gas and electricity works ;
- (d) water and power distribution works ;
- (e) mills, bakeries and slaughter-houses ;
- (f) hospitals ;

- (g) sewage and street-cleaning undertakings ;
- (h) public health services.

1. Whether or not arbitration is compulsory, a decision on the dispute is given by an arbitration commission appointed specially for each case and composed of five members, two of whom represent the workers and two the employers. The procedure for their appointment is the same as in the case of conciliation commissions. The president is elected by vote by the four regular members of the commission ; should they fail to reach agreement, the Ministry appoints a professional judge as president, who may be the president of the civil court, the president of the court of appeal or the president of the court of cassation, according to the importance of the dispute.

2. The provisions governing the procedure of arbitration commissions are the following. Arbitration must in every case be preceded by conciliation. The minutes and all documents relating to the conciliation proceedings are immediately transmitted to the president of the arbitration commission by the representative of the Ministry of Labour who presided over the conciliation proceedings. The president convenes the delegates for the purpose of the negotiations, and either on his own initiative or at the request of the other members he may carry out any necessary enquiries. For this purpose he may ask for expert opinions, call witnesses and make investigations on the spot. The administrative, police and judicial authorities of the country are legally bound to assist the arbitration commission.

3. If in the unanimous opinion of the commission it is impossible to resolve some or all of the questions in dispute except by the application of the solution appropriate to these questions to all similar undertakings in the same district, the president must dissolve the arbitration commission and invite the parties concerned in all these undertakings to appoint representatives to a new commission. The proceedings then enter upon a new stage, during which the same procedure is followed as in the case of the original arbitration commission (cf. 2 above).

4. The award of the arbitration commission to which the dispute has been referred is given by a majority of votes. In the event of a refusal to vote on the part of the members of the commission, or in default of a majority, the award is issued by the president ¹.

¹ Cf. the corresponding regulations in Germany.

5. An arbitration award, like the decision of a conciliation commission when agreement is reached, is binding upon the parties. Section 32 provides the same penalties for failure to carry out the provisions of an arbitration award as for failure to carry out the decision of a conciliation commission.

CONCILIATION AND ARBITRATION MACHINERY INSTITUTED BY COLLECTIVE AGREEMENT

In Rumania the number of collective agreements that provide conciliation and arbitration machinery for the settling of disputes is far from negligible. As in other countries, the initiative in this matter was taken by the printers' trade unions. Thus, even before the war, the regulations concerning hours of work and wages of the workers in the printing trade in Siebenburgen and the Banat provided for district arbitration boards under the supervision of a national wages commission. These regulations continued in force when the district in question became part of the Kingdom of Rumania. The printers in the former Rumanian Kingdom have also instituted permanent arbitration boards with a Central Commission as ultimate court of appeal. The Commission's main function is to supervise the enforcement of existing wages agreements, but it also assists when a dispute arises in concluding fresh agreements.

In the metal industry arbitration committees have also been set up by collective agreement, but in most cases no definite procedure has been established. Collective agreements sometimes contain clauses stipulating that in the event of a dispute committees are to be convened consisting of an equal number of representatives of both sides. Permanent committees exist as a rule only for determining minimum wages.

When a dispute arises in the match industry, a conciliation committee is appointed whose competence extends only to the dispute in question.

In all these cases non-official methods of conciliation and arbitration are tried before recourse is had to governmental machinery. It should be noted that the sanctions provided in section 32 of the Act in connection with the official settlement of disputes cannot be applied in order to secure enforcement of non-governmental arbitration awards.

§ 3. — Results and Opinions

Information concerning the number of collective labour disputes and the work of the conciliation and arbitration commissions is given in tabular form below :

I. — LABOUR DISPUTES

Year	Strikes				Lock-outs			
	No. of disputes	Workers affected	Under-takings affected	Days lost	No. of disputes	Workers affected	Under-takings affected	Days lost
1922	180	17,500	—	197,988	39	5,319	—	108,738
1923	112	16,841	—	287,822	10	433	—	3,223
1924	85	11,453	—	208,488	3	296	—	3,877
1925	69	19,683	220	208,501	4	274	20	1,390
1926	85	20,338	516	326,035	3	104	3	51
1927	48	5,535	205	47,981	3	969	14	10,310
1928	56	9,054	213	99,371	1	145	1	10,295
1929	124	26,425	406	389,864	3	780	—	20,382

II. — SETTLEMENT OF LABOUR DISPUTES

Year	Disputes settled by							
	Direct negotiation between the parties (sometimes with the assistance of the Labour Inspectorate)		Conciliation and mediation (voluntary and compulsory)		Withdrawal of the workers from the dispute		Dismissal or leaving of workers or closing of the undertaking	
	Strikes	Lock-outs	Strikes	Lock-outs	Strikes	Lock-outs	Strikes	Lock-outs
1922 . .	162	34	9	1	6	1	3	3
1923 . .	97	7	5	—	5	1	5	2
1924 . .	84	3	1	—	—	—	—	—
1925 . .	66	4	3	—	—	—	—	—
1926 . .	76	1	4	—	—	—	5	2
1927 . .	43	3	1	—	—	—	4	—
1928 . .	39	—	3	1	8	—	6	—
1929 . .	110	2	8	1	—	—	5	—

At first the interpretation of the Act of 4 September 1920 gave rise to considerable difficulties. A number of public undertakings, to which — as is explained above — the Act affords special protection (cf. above § 2, II, *a-h*), adopted the point of view that the arbitration commissions set up under the Act were not competent to compel the parties to accept a new wages agreement.

It was only in 1929 that this point was finally decided as a result of a dispute involving the staff of the Wagons-Lits Company. The workers' representatives contended that, as the request for an arbitration award had been signed by the majority of the workers concerned, the award had the force of a fresh agreement covering all the workers who had been parties to the original collective agreement. This opinion was upheld by the commission. In the same year the organ of the trade unions (*Sozialismul*, 16 February 1929) admitted in connection with another case that wages might be considerably raised as a result of an official settlement. As the existing legislation seeks to avoid compulsion in any form, little opposition to governmental machinery for the settlement of disputes has been evinced on the employers' side. But occasionally the fact that good organisation among the workers is necessary for the smooth working of the Act gives rise to unfavourable comment, since many employers have no desire to see the workers' organisations increase their membership still further.

§ 4. — Summary

In Rumania conciliation and arbitration machinery is of comparatively recent date. In the light of the experience of such machinery already gained in other countries it was found possible shortly after the war to introduce a uniform system of conciliation and arbitration, in which the element of governmental compulsion was reduced to a minimum. All workers in undertakings employing more than ten workers, and all employers, are required to refer disputes to a conciliation commission before resorting to strikes or lock-outs, but arbitration is compulsory only in State undertakings, autonomous State services and a certain number of public utility undertakings enumerated in the Act.

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UNITED STATES OF AMERICA

§ 1. — Economic Background and Development

The United States is made up of forty-eight self-governing States, two territories — Hawaii and Alaska — and Porto Rico which, although not technically speaking a territory, is self-governing. The population of the continental United States in 1928 was estimated at 120,013,000, the total area being nearly three million square miles. Of this population, the census of 1920 showed 51.4 living in urban districts, and 48.6 in rural districts. It was estimated that in 1927 43,943,000 persons in the United States were "gainfully occupied", of whom 36,372,000 were engaged in non-agricultural work. The number of persons employed in the major industrial groups in that year was estimated to be as follows: manufacturing 10,598,000; transportation and communication 5,204,000; construction 1,563,000; and mining, etc., 1,285,000. The number of public employees was put at 2,819,000, of mercantile employees at 4,623,000, while 6,603,000 were employed in miscellaneous groups, including banking and other financial employments, the professions, etc.¹

The United States is a country of immigration. During the pre-war period 1908-1914 net immigration (immigrants less emigrants) averaged 664,000 per annum; during the war and early post-war period (1915-1921) it averaged 179,000 a year; during the six years 1922-1927 the annual average has been 312,000.

The membership of American trade unions in 1927 was estimated to be 3,903,800. In 1920 it stood as high as 5,110,800, falling to a low point of 3,746,600 in 1924, since which time there has been a slow increase. Among the industries showing a relatively large percentage of trade unionists, may be noted the building trade with an estimated membership of 1,014,000 in 1927, transportation with 950,000 members, mining and quarrying in which

¹ These estimates are taken from the *Report on Recent Economic Changes in the United States*, p. 474. New York, McGraw-Hill Book Co., 1929.

the United Mine Workers have some 300-400 thousand members, and the clothing trades, with 283,000 members. The American Federation of Labour, which is the chief central trade union organisation in the United States, had a reported membership of 2,933,545 in 1929.

Machinery for the conciliation and arbitration of industrial disputes in the United States may be divided into three main types: governmental machinery; machinery set up by a particular trade or industry independently of government; and employee representation, or some similar plan set up in various individual undertakings. The governmental machinery may itself be subdivided into Federal machinery, comprising the United States Conciliation Service and the statutory system in force on the railroads; and the measures adopted by the various State legislatures for dealing with disputes.

When a separate Department of Labour was constituted in 1913, provision was made for setting up the *United States Conciliation Service*. The Act in question provided that "the Secretary of Labour shall have power to act as mediator and to appoint commissioners of conciliation in labour disputes whenever, in his judgment, the interests of industrial peace may require it to be done".

For the year 1915, Congress assigned \$50,000 for the work, and thirteen Commissioners of Conciliation were appointed. In 1919, there were seventy-nine Commissioners stationed at points throughout the country. In July 1927 there were thirty-eight Commissioners in addition to the Director of the Service.

The machinery for the prevention and settlement of industrial disputes on the *railroads* has a rather longer history. In 1887 Congress passed the first Federal Act to regulate railroad rates. This was followed in 1888 by an Act providing for voluntary arbitration and for enquiry at the instance of the President of the United States. This measure was not much used, and in 1898 a further Act made provision for mediation and conciliation on the railroads, and, if necessary, for arbitration. When, in 1906, this Act came into use, most of the work done under it was mediation. It was replaced in 1913 by an Act which provided for a permanent mediation body. During the war and post-war period from December 1917 to February 1920, the railroads were under the Federal Railroad Administration. When this administration came to an end, the Transportation Act of 28 February 1920 set up a Railroad Labour Board to be a continuous

agency of investigation and final reference. This Board was composed of three representatives from each side and three representatives of the public, all appointed for five years. It was intended to supplement the work of the Adjustment Boards set up during the war. If a dispute could not be settled by conference, the parties to it were obliged to submit the question to the Board, but the awards of the Board were not enforceable. It was authorised to take up cases upon its own motion only if they seemed to interrupt commerce. In 1921 the war-time Adjustment Boards were dissolved and, by agreement between certain of the railroads and their employees, a Train Service Adjustment Board was formed for each of the three railroad districts of the country. Since many of the railroads did not participate in setting up these Boards, and did not make use of them, the Railroad Labour Board was swamped with minor arbitration cases. Partly as a consequence of this, the Board lost favour both with the railroad companies and with the railway trade unions, and also with many sections of the public, and in 1926 it was replaced by the Act at present in force.

The machinery for the conciliation and arbitration of industrial disputes set up by the various *State* legislatures varies from State to State. In all, thirty-nine of the forty-eight States have laws intended for the prevention and settlement of industrial disputes. These States are :

Alabama	Maine	Oklahoma
Arizona	Maryland	Oregon
Arkansas	Massachusetts	Pennsylvania
California	Michigan	Rhode Island
Colorado	Minnesota	South Carolina
Connecticut	Missouri	South Dakota
Georgia	Montana	Texas
Idaho	Nebraska	Utah
Illinois	Nevada	Vermont
Indiana	New Hampshire	Washington
Iowa	New Jersey	West Virginia
Kansas	New York	Wisconsin
Louisiana	Ohio	Wyoming

Alaska, the Philippine Islands, and Porto Rico also have legislation on this question, while the Federal district of Columbia is covered by the Federal Conciliation Service. The States which have no laws are almost all Southern States and predominantly agricultural.

The systems set up by *particular industries* are in some few cases of fairly long standing ; the Inter-State Joint Conference of the Central Competitive Field of the Bituminous Coal Industry,

for instance, began work in 1886, while the Permanent Board of Arbitration and Conciliation in the anthracite coal industry has been in existence since 1903. Other trades and industries having well-developed machinery, although usually of more recent date, are the needle trades, the fur trade, the boot and shoe trade, and printing.

The growth of *company unions* and similar bodies is of much more recent development, having first come into prominence during the war under the encouragement of the war-time adjustment agencies. During the last few years machinery of this type has become far more prevalent and obtained more permanent status.

The *war-time agencies* for the prevention and settlement of industrial disputes, to which brief reference must be made, centred around the Mediation Commission appointed in September 1917 by the President, composed of two representatives of labour and two of capital, with the Secretary of Labour as chairman, afterwards replaced in 1918 by the National War Labour Board. This Board was composed of five representatives of employers' associations, five trade unionists appointed by the American Federation of Labour, and two representatives of the public, one chosen by each side. This body had no compulsory powers, but nevertheless exercised a very great authority. After the close of the war, however, the influence of the Board waned, both employers and workers appearing to favour independent bargaining, and on 12 August 1919 it was abolished. Among the many agencies set up in connection with particular industries should be mentioned the Railroad Administration, the Emergency Construction Wage Commission to supervise labour relations in Government building, the Shipbuilding Labour Adjustment Board, the Marine and Dock Industrial Relations Division, the National Adjustment Commission dealing with disputes between longshoremen and the shipping and stevedore companies, the New York Harbour Board of Arbitration, the Arsenal and Navy Yard Wage Commission, the Industrial Service Section dealing with labour relations in private munition plants, the Loyal Legion of Loggers and Lumbermen, the Administrator of Labour Standards and Army Clothing, and the National Harness and Saddlery Adjustment Commission.

§ 2. — The System in Force

The system of conciliation and arbitration in force in the United States bears some general resemblance to the system in force in Great Britain in its insistence upon the voluntary principle. On the other hand, it differs sharply in the matter of the recognition accorded to trade unions¹. Collective bargaining is carried on widely in the United States, but it does not occupy by any means so important a position as in Great Britain. In point of fact, the whole question of conciliation and arbitration has attracted far less attention in the United States than in most countries, particularly during the last few years.

GOVERNMENTAL SYSTEMS

Federal

The Federal Conciliation Service is a subsidiary of the office of the Secretary of Labour. There is no statutory prescription as to what the duties of commissioners shall be. They offer their services on request by either party to a dispute, or on the request of a representative of the community. They have no powers of compulsion. With few exceptions, the commissioners have confined their activities to mediation, the policy of the Service being against arbitration on the ground that an arbitrator is likely to fall into disfavour with one party to the dispute. Their chief work consists in bringing the two sides together, and suggesting a compromise solution ; or, if they refuse to meet, in conferring with each side separately and working out a basis of settlement.

The Federal Commissioners co-operate with the State or local mediators. Each one specialises in some particular district. Sometimes they offer advice to employers or unions as to how labour relations might be improved. During the war period the Conciliation Service was able to get many cases settled through adjudication by referring them to the War Labour Board. Some idea of the extent of the activities of the Conciliation Service may be gathered from the fact that during the first fourteen years of its existence some 8,000 disputes of various sizes were taken up, of which 87 per cent. were brought to a successful

¹ Cf. *Freedom of Association*, Vol. V, pp. 1 et seq.

settlement. During recent years it has adjusted some 300-400 cases annually.

Railway Labour Act, 1926

This Act, the latest in a long series of Acts dealing with the railway industry, covers all crafts engaged in the industry, including marine workers on railroads. It outlines the system for the settlement of disputes, but it leaves every individual railway and its employees free to use any other machinery they may agree to set up. Collective bargaining for the industry as a whole is not established by the Act.

The machinery set up makes provision for four types of procedure. There are first of all the boards of adjustment. These boards are non-governmental, and are to be set up by agreement between the railway or group of railways and their employees. Expenses are divided in the proportions agreed upon in setting up the board. They deal with questions arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions. The boards take up cases only after efforts have been made to settle the matter by conference, which may be carried up as far as the chief operating officer of the railway in question. The boards are permanent, and are composed of an equal number of representatives of each side. Unless otherwise agreed, decisions are given by a majority of the board; by the terms of the agreement, awards are to be binding, but no penalties are fixed. If a deadlock is reached, the matter may be mediated or arbitrated.

A mediation board for the whole industry is provided for in the Act. This board is permanent and governmental, consisting of five impartial members appointed by the President of the United States for a term of five years. Expenses in this case are paid by the Government. The types of disputes dealt with by the board are the same as those dealt with by the adjustment boards, the intention of the Act being that disputes shall only be brought before the board after conference or the appropriate adjustment board has failed to settle them. Either party to a dispute may apply to the board, or the board may proffer its services. If its mediation proves unsuccessful, it endeavours to induce the parties to submit to arbitration. The board itself does not engage in arbitration, on the grounds that by so doing it would be likely to accumulate resentment. If no settlement is reached, and the board considers that an emergency exists,

it notifies the President, who may appoint a board of enquiry. The mediation board has no powers of enforcement.

If it is agreed to refer a dispute to arbitration, the parties may bring the matter before an arbitration board or arrange for arbitration outside the Act. The governmental arbitration boards have power to administer oaths and compel testimony. These boards consist of one member appointed by each side and a third impartial member to be appointed by the first two, or, failing agreement, by the board of mediation. By agreement, a board may consist of twice that number appointed in the same manner. The agreement to arbitrate must stipulate that a majority decision shall constitute a binding award. As is evident from the constitution of the arbitration boards, a new board is set up for each case. The expenses of the partisan arbitrators are paid by the parties, and other expenses by the board of mediation. The parties may have recourse to the services of counsel. The agreement to arbitrate must lay down that the parties will accept the award, but no penalties are specified in the Act for failure to carry out the award.

On notification by the board of mediation that an unsettled dispute is likely to interrupt an essential service, the President of the United States may appoint a board of enquiry. A board must report within thirty days of its creation, and in the meantime the parties must maintain the *status quo*. Here again no powers of enforcement are specified.

An important provision laid down in the Act is that thirty days' written notice must be given by either side of its intention to make or apply for any change in rates of pay, rules, or working conditions.

State Agencies

As already noted, forty-two States, territories or possessions have laws dealing with the conciliation and arbitration of industrial disputes. There are five main classes of State agencies for the prevention and settlement of industrial disputes provided for by State laws :

- (1) State boards for mediation, arbitration or enquiry, either permanent or working intermittently ;
- (2) *Ad hoc* boards of arbitration ;
- (3) Local or county boards of arbitration licensed to serve for a definite period ;
- (4) Commissions of State Departments of Labour ;

- (5) Occasional intervention by the Governor or Labour Department, with power to appoint a board of mediation or enquiry.

Of the forty-two States and territories having laws providing for intervention in industrial disputes, eighteen make provision for a State Board, seventeen for *ad hoc* boards, eighteen for an industrial commission, six for occasional intervention, and two for local or county boards. As the figures indicate, some States provide for more than one agency. In eleven States the law provides for a commission only ; in nine for both a State Board and *ad hoc* boards ; in six for a State Board only ; in four for occasional intervention and *ad hoc* boards ; in three for a commission and a State Board ; in two for occasional intervention only ; in one for *ad hoc* boards only ; in one for a State Board, *ad hoc* boards and local boards ; and in one for *ad hoc* boards and commissions.

The general method of operation of most of the State systems is along the following general lines. Upon threat or occurrence of a dispute between employers and workpeople which may become serious, an agency created by the State for this purpose intervenes and endeavours to bring the two sides into conference and to find a solution satisfactory to both. If such attempts at conciliation fail, an effort is made to get the disputants to consent to arbitration. A settlement may be made by the mediating agency, by an arbitration board established under Statute, or by an *ad hoc* body.

Sixteen States limit intervention to disputes in which a minimum number of persons are involved, the requisite number varying from ten to fifty. Most State laws provide that the findings of the intervening agencies shall or may be made public, while, on the other hand, three of them restrict publication. Certain States pay the expenses of arbitration, but nine States require the parties to the arbitration to pay part or the whole of the expenses.

Under the terms of two Statutes, arbitration awards (in each case by *ad hoc* bodies) are entered as judgments of the court. In six States such awards are filed with the clerk of the court. In three of the States arbitration awards are specifically made enforceable. Nineteen State laws provide that the agreement to arbitrate shall contain a clause accepting the decision reached. In two States the agreements to arbitrate are enforceable.

Few of the State laws have been used to any considerable extent. Of the three methods of intervention — mediation, arbitration and enquiry — mediation has yielded the greatest results. The only five States at present reported as doing active mediation

work are Massachusetts, New York, Pennsylvania, Oregon and Washington. Massachusetts has the only active arbitration board. In New York and Washington, as in the Federal Conciliation Service, mediation is the duty of the Labour Commissioner, and a special Division of Mediation is suggested by the Statute.

A description of four of the most interesting State systems follows :

Massachusetts

The Massachusetts Board of Conciliation and Arbitration was first set up and used in 1886. In 1919 the State Government was reorganised and the Board was put under the Department of Labour and Industries. It is composed of three members who, since 1919, have been associate commissioners of the Department of Labour and Industries. The Board is mainly engaged in arbitrating for the shoe industry. In addition to its arbitration work it undertakes occasional formal conciliation and, more rarely, official enquiries. The work of preliminary enquiry and mediation is performed by a travelling agent employed by the Board.

The Board usually intervenes on its own initiative. If the parties to a dispute decide to arbitrate they may use the State board or a board of their own choosing. If they refuse to arbitrate the board continues its enquiry with a view to conciliation, or, if no settlement is reached, it makes its report public. If a strike or lock-out occurs during arbitration proceedings the Board may not continue except with the consent of the employer struck against or the locked-out workers. The Board has power to examine the books of companies and to compel the production of evidence. The award, once made, may be rejected on sixty days' notice. Otherwise it runs officially for six months. The most frequent arbitration awards are for the fixing of revised piece-rates in the shoe industry. The Board has expert knowledge of this industry, and commands the confidence of both sides.

New York

New York has the most active state mediation system in the country. The first Board of Mediation and Arbitration was set up in 1886. It was chiefly engaged in mediation. In 1919 when the State Government was reorganised a Division of Mediation and Arbitration was formed in the Bureau of Industrial Relations of the Department of Labour. The Division consists of five mediators. They do not arbitrate, but they recommend arbitration

to the parties when conciliation proves unsuccessful in settling the terms of a new collective agreement. They also recommend the insertion of a clause in collective agreements providing that minor disputes shall go to arbitration.

Two of the mediators devote themselves to upper New York State, the other three to the Metropolitan District. They keep in continual touch with the officials of associations in their assigned industries. The Commissioner of Labour occasionally uses his power to conduct a public enquiry when a strike takes place.

Kansas

The soft-coal strike of 1919 led to the adoption by the Kansas legislature in 1920 of the Kansas Court of Industrial Relations Act, by which was created a Court of Industrial Relations for the compulsory arbitration of labour disputes in essential industries. The greater part of the Act has since been declared unconstitutional by decisions of the Federal Supreme Court. The experiment, however, aroused a great deal of interest.

By this Act the manufacture of food and clothing and the production of fuel, together with their transportation, and all common carriers and other public utilities, were considered to be industries affected with a public interest. If a labour dispute arose in these industries the Court of Industrial Relations was empowered to summon the parties before it and investigate the matter. It was then "as expeditiously as possible" to serve upon all parties a statement of the terms upon which the business "should be thereafter conducted in so far as the matters determined by the Court are concerned".

The Court was composed of three members. It was empowered to summon witnesses and administer oaths. It was directed to keep a public record of its proceedings and to follow the rules of evidence of the State Supreme Court. Its orders were to be "just and reasonable". If a party obeyed the order in good faith for sixty days and found it unreasonable, it could have a re-hearing. If the Court found that an employment contract was "unfair, unjust, and unreasonable" it might order it to be changed.

The Court had power to compel the production of books of companies and unions. It could compel compliance with its decisions through the State Supreme Court. Any party which considered an order of the Court unreasonable might appeal within ten days to the State Supreme Court to compel the Court

of Industrial Relations to make a reasonable order. The Supreme Court was to give such cases precedence over other civil cases.

Unions if incorporated might appear before the Court as legal entities. It was unlawful to penalise any person or company for appealing to the Court or complying with its orders. Strikes in essential industries were unlawful. Any company in an essential industry was forbidden to limit production wilfully for the purpose of avoiding any provisions of the Act. Violation of the Act or an order of the Court was punishable by a fine not exceeding \$1,000, or imprisonment not exceeding one year, or both. If, in the opinion of the Court, the failure of an essential industry to obey its orders and the Act constituted a danger to the public peace or health, the Court was directed to take over the industry during the emergency.

If employer and employees in a non-essential industry agreed to submit a dispute to the Court its award would take effect in the same way as for essential industries.

Both employers and workers appear to have been hostile to most of the provisions of the Act. Another difficulty the Court encountered was the fact that large disputes usually spread beyond the borders of the State. It was, therefore, unable to deal with them effectively. It is claimed, however, that the Court had some influence in Kansas on the inter-State strikes in meat packing in 1921 and in coal mining and railroad shop work in 1922.

Colorado

The Industrial Relations Act of April 1915 was modelled on the Canadian Industrial Disputes Investigation Act of 1907. It forbids stoppages in essential industries until the Industrial Commission shall have investigated the case. If the parties have agreed to accept an award of the Commission it is binding. Violation of an award or of the Act are punishable by fine or imprisonment. The Commission has been engaged chiefly in conciliation work. In 1926 the Colorado State Federation of Labour petitioned the Governor for the repeal of the Act.

NON-GOVERNMENTAL SYSTEMS

A number of industries and undertakings have set up various types of machinery for dealing with industrial disputes. Among the chief industries having such machinery are the coal-mining

industry (bituminous fields and anthracite fields), the clothing trades, the boot and shoe trade and the printing trades. In such cases, adequate organisation necessarily exists on both sides.

The machinery set up by various undertakings ordinarily assumes the form of employee representation plans. In such cases, effective trade union organisation may exist, but more usually these plans are of a non-union character.

Systems Set Up by Particular Industries

Coal

The chief agencies for settling the terms of collective agreements and adjusting major disputes in the coal industry are the joint conferences of operators and miners — one for the central competitive field in soft coal, and one for the hard-coal region. Where major disputes have been submitted to arbitration it has been governmental arbitration. The operators would appear to favour arbitration, but the miners' union is opposed to it. As a last resort the union submits minor disputes or grievances to arbitration rather than permit local strikes.

During the war mediation was undertaken by the Secretary of Labour and the Fuel Administration. A penalty clause was inserted into every contract which provided that fines were to be imposed for a strike or lock-out engaged in before the matter had been submitted to the Fuel Administration for settlement.

Bituminous Coal

The Interstate Joint Conference of the central competitive field, begun in 1886, has met regularly since 1898 (with the exception of 1922) to revise and renew the basic collective agreements. In accordance with the principle of "competitive equality" the high-cost mines were permitted to pay lower wages than the more efficient mines, and basic wage scales were, therefore, fixed by the Interstate Joint Conference and used in the districts as a basis for settling the different scales by district bargaining. The out-lying union fields also negotiated agreements on the basis of the central competitive agreement.

At present the strongest competition is felt no longer between the different mines of the central competitive field but between the mines of that area and those of the non-union fields of West Virginia and Eastern Kentucky. When the 1924-1927 agreements ran out, the operators demanded a sliding scale of wages which should follow more nearly the non-union rates. They proposed

that the changing scale be put in charge of a mediating body. The union replied that what was needed was better organisation among the operators, and suggested more frequent meetings of the joint conference. No agreement was reached and the miners struck in those mines which refused to carry on work at the old rates.

At various times federal commissions have been appointed with a view to analysing and solving the problems of the coal industry. In December 1919 the Bituminous Coal Commission, composed of one representative of each side and one of the public, was appointed. It reported in March 1920 and its decisions were embodied in an agreement made by the Interstate Joint Conference. In 1922 the United States Coal Commission was set up to enquire into the conditions of the mining industry both for soft coal and hard coal. It reported in 1923, but its recommendations were not much used in the settlement of later disputes.

Before the 1927 suspension the Interstate Joint Conference was composed of sixty-four members: eight miners and eight operators from each of the four districts. They are known as the scale committee. The miners are usually represented by district officers of the United Mine Workers. The operators are represented both by members of associations and by independent operators. Decisions of the scale committee on each clause of the agreement must be unanimous. If it fails to agree a sub-scale committee of eight, consisting of one member from each side from each district, is appointed. The decisions of this sub-scale committee are usually accepted by the full committee. If the sub-scale committee fails to agree there is a suspension of work.

The agreements usually forbid local strikes. If a dispute arises every endeavour is made to settle it by conference. The procedure varies in different districts. The following is a typical method.

If the pit committee cannot settle the matter with the mine manager or foreman it is submitted to successive conferences with higher officials and finally to the *joint executive board* (the executive boards of the district union and of the district operators' association meeting together). If no settlement is reached both sides may agree to submit the matter to a standing board of three impartial arbitrators, whose decisions are morally, although not legally, binding. Both sides share the expenses of arbitration.

Anthracite Coal

In the hard-coal fields organised bargaining has been going on since 1903. Following a strike in 1902, a Federal Commission was set up to investigate the industry. Its award was embodied in an agreement which included provision for a permanent Board of Arbitration and Conciliation. This board was set up in 1903 and has continued to work. As in the soft-coal industry the Joint Conference Committee has met regularly to revise and renew the collective agreements. The hard-coal mines are not faced with the same strong competition from non-union areas as are the union bituminous mines.

The operators have no formal organisation. Their representatives for the Joint Conference Committee are elected at a meeting held for the purpose. The miners are usually represented by district officials of the United Mine Workers, with the international president or vice-president as spokesman. This Joint Conference Committee is known as the scale committee. In case of disagreement a sub-scale committee may be appointed. Since 1916 the Conciliation Board, with one additional member from each side, has acted as wage scale committee.

The *Conciliation Board* is composed of six members, one from each side from each of the three hard coal districts. By the terms of its constitution, if the Board could not reach an agreement, it was to refer the case to an umpire, who was to be appointed by one of the Federal circuit judges of that circuit.

Minor disputes are dealt with by conference between the company and the grievance committee of three. These grievance committees are set up for each mine or mine division and are similar to the pit committees of the soft-coal fields. If no settlement is reached the question is submitted to the two Conciliation Board members for that district. If they fail to agree it is referred to the full Board.

At various times Federal commissions have also held enquiries into the hard-coal mining industry. In 1920 the Anthracite Coal Commission was appointed, on which there was one representative for each side and one for the public. Its award was embodied in the agreement of 1920. There were unofficial strikes against the award, and the United Mine Workers subsequently declared themselves opposed to arbitration.

In 1923 there was a suspension which was successfully mediated by the Governor of Pennsylvania. The agreement made included

certain of the recommendations of the United States Coal Commission, which had just made its report for the industry. The Conciliation Board was authorised under the agreement to study the wage scales and recommend changes to the next Joint Conference.

In 1925 there was a suspension of 170 days. The miners refused to arbitrate. Finally, the vice-president of the Susquehanna Collieries Company acted as conciliator. The agreement made ran until 31 August 1930. It provided that no changes were to be made in wages before 1 January 1927, nor more than once a year after that. If the scale committee could not agree on such changes, the question was to be submitted to a board of two persons unconnected with the industry who are to be chosen one by each side from a panel of three submitted by the other side. If these two persons cannot settle the question they may, by agreement, elect a third to arbitrate. The agreement also instructed the Conciliation Board to study methods of equalising wages, and other questions.

Needle Trades

Minor disputes and grievances in the needle trades are adjusted wherever possible by negotiation. If negotiation fails they are usually settled by arbitration. On the other hand the terms of collective agreements and major disputes affecting conditions of work over a considerable period are no longer settled by arbitration.

The procedure for the settlement of minor disputes and grievances varies. The typical method is for a dispute, which negotiation has failed to settle, to be referred to the arbitrator or "impartial chairman" of the market. Strikes are usually forbidden during the life of an agreement.

The first important experiment with impartial machinery was made in 1911 by agreement between the firm of Hart, Schaffner and Marx in Chicago and the United Garment Workers. A board of arbitration was set up composed of one representative of each side and a third chosen by these two. The Board was swamped with minor cases. A subsidiary trade board was then set up, composed of an equal number from each side of representatives with experience of the industry, and an impartial chairman. This board appointed investigators whose decisions were binding unless appeal was made to the trade board within three days. Appeal might be made from the trade board to the arbitration board.

Most of the other firms in the Chicago men's clothing market

have copied the Hart, Schaffner and Marx machinery. At the present time the most active impartial machinery is to be found in the men's clothing centres — Chicago, New York, Rochester and Baltimore.

Impartial machinery. — In some markets the impartial machinery consists of a board composed of one representative of each side with an impartial chairman. The partisan members usually act as advocates for their own side. They also occasionally act as advisers of the chairman on conditions in the industry. In other markets the impartial machinery consists only of the impartial chairman.

The chairman sometimes arbitrates in a dispute ; sometimes he acts as mediator and brings about a settlement by agreement between the parties. The contending parties often use past decisions of the chairman as guides to settle a dispute without recourse to the machinery itself. The chairman sometimes acts as mediator in a major dispute.

The majority of agreements do not mention penalties. Occasionally, if a firm is proved to have acted in bad faith, it is fined. If the workers have struck, the chairman may refuse them redress of their grievances if they do not return to work immediately. The chairman is paid by both sides equally. Not many markets employ a full-time chairman.

With a view to avoiding the hardship and friction caused by the high degree of seasonality of the clothing trades, efforts have been made to establish unemployment insurance and to ensure the equal distribution of work in slack seasons. The Amalgamated Clothing Workers also co-operate with some of the men's clothing companies in finding ways of increasing the efficiency of the industry.

The Amalgamated Clothing Workers claim to have secured the three following rules by negotiation : (1) the limitation of the power to discharge ; (2) equal division of work in slack seasons ; and (3) the registration of contractors.

It is estimated that the machinery for adjusting grievances in the men's clothing industry extends to 90-100,000 union members who work under collective agreements in the United States and Canada. It also affects the conditions of work of other union and non-union employees.

Women's clothing. — New York City is the centre of the women's clothing industry. In 1910, following a strike of the New York

City shirtwaist workers and the New York cloakmakers, a Joint Board of Sanitary Control and a bi-partisan committee on grievances, together with a board of arbitration, were set up. This machinery was extended to other trades in the industry, and has continued to work, with interruptions. The managers from each side sit on the board with the chairman. Cases are decided more by arbitration than conciliation, since this is the quicker method. The chairman also hears cases between jobbers and sub-manufacturers.

The impartial machinery of the New York City cloak market covers about 35,000 workers.

Fur Trade

Most of the fur trade is centred in New York City. Since 1912 agreements in the New York Market have been negotiated by the Joint Conference Committee. This committee is composed of five members from each side with an impartial chairman. The chairman practises conciliation rather than arbitration in major disputes. Grievances are dealt with by the Committee on Immediate Action, which is presided over by the same impartial chairman. On this committee the chairman arbitrates if negotiation fails.

The Cloth Hat, Cap and Millinery Workers' International Union, and the International Pocketbook Workers' Union have similar provisions for impartial machinery.

The Boot and Shoe Trade

In the shoe-making industry the two most prominent unions both use arbitration.

The general practice of the Boot and Shoe Workers' International Union is for the representatives of its general executive board to negotiate with the individual employer a standard agreement which provides for the arbitration of disputes concerning wages, conditions of employment, or any other question, and gives to the employer the right to use the union stamp on his shoes. The standard agreement forbids strikes or lock-outs, and in signing it the employer agrees to the closed shop. When the standard agreement has been signed the local union negotiates with the individual firm to fix wage rates and conditions of labour.

The standard agreement also specifies a board of arbitration to which disputes shall be referred. In Massachusetts, where

many of the locals of the Boot and Shoe Workers' Union are situated, the board specified is the State Board of Conciliation and Arbitration. Outside Massachusetts, in districts where there is no State board of arbitration, conciliation is more used than arbitration. The union favours the use of conciliation where possible.

The Shoe Workers' Protective Union has a more aggressive policy than the Boot and Shoe Workers, but for some years it has used arbitration both for fixing the general level of wages and conditions of work, for adjusting the differentials between crafts, for adapting the piece-rate structure to the continually changing styles in women's shoes, and for settling grievances. In 1923 the Haverhill Shoe Board was set up by agreement between the Shoe Workers' Protective Union and the Haverhill Shoe Manufacturers' Association. It is composed of a representative of each side with a neutral chairman. The chairman is employed continuously. Decisions are issued over his signature only. It is his duty to make a personal investigation of a dispute.

Printing

In the organisation of the industry into trade or employers' associations the two major divisions are the newspaper branch and the commercial and periodical branch. The international labour unions concerned cover both branches of the industry for the United States and Canada. In bargaining over wages and conditions of labour the local labour unions usually act independently of the national unions. The national unions often recommend arbitration where local negotiation fails to frame a new agreement.

Newspaper branch. — The larger newspapers are united in the American Newspaper Publishers' Association. The need for continuous production in the newspaper industry has encouraged amicable relations between the companies and the unions. They negotiate regularly and use arbitration to settle their deadlocks. Arbitration is also occasionally used to adjust grievances that conciliation has failed to settle.

In 1901 the American Newspaper Publishers' Association and the International Typographical Union signed a national arbitration agreement covering a few newspapers willing to make the experiment. The agreement provided for local arbitration boards with right of appeal to a national board. It worked very

satisfactorily, and was revised and renewed periodically. More newspapers came under the agreement and similar agreements were made with other printing unions. In 1922 the national arbitration agreement with the Typographical Union was not renewed because the union insisted that certain of its rules should not be submitted to arbitration ; but the practice of settling disputes by arbitration was continued. At the present time the only national arbitration agreement is that between the American Newspaper Publishers' Association and the International Printing Pressmen and Assistants' Union. However, local arbitration agreements are usual in all the trades.

The form of procedure for the settlement of disputes is similar for all the unions. The parties agree not to strike or lock-out. Conciliation is used as far as possible. If no agreement is reached the matter must be referred by the parties to the special standing committee of the association and to the president of the national union, respectively. These two decide what subjects can properly be arbitrated. A local arbitration board is set up, composed of two residents of the town chosen by each side. These four choose a fifth as chairman. The chairman only decides the matter if the four members cannot reach a majority vote. The two parties divide the expenses equally. The association or the national union endeavour to enforce the award of the board.

The national arbitration board of the pressmen's union is composed of three representatives of the employers' association and three of the union. Its main work is to hear appeals from the decisions of local boards. If the board deadlocks it may unanimously elect a seventh neutral member.

Commercial and periodical branch. — In the commercial and periodical printing industry many of the employers do not deal with unions, and the employers' associations are divided in policy between the open shop, the closed shop and neutrals. In unionised companies arbitration is habitually resorted to, especially in New York City, but disputes are settled whenever possible by conference and conciliation.

In 1919 a Joint Conference Council was formed, composed of representatives of the four chief international unions and employers' associations representing 70-75 per cent. of the book and job printing work of the country. The Council was to formulate policies for the book and job printing industry ; and its duties included the investigation of the causes of labour disputes. It was to act as an appeal board of conciliation. The Council agreed

on standard arbitration contracts similar to those used by the Newspaper Publishers' Association, and provided for local boards of conciliation. Since 1921 the Council has taken little action.

In 1927 the Pressmen's Union reported that at least 90 per cent. of the locals had arbitration agreements with the commercial and periodical printing companies. Their standard agreement provided for disputes and grievances to be submitted to a bi-partisan board of four. If the board could not agree it was to choose an arbitrator. The laws of the union were not to be subjected to arbitration.

Company Unions and Union Management Co-operation

During the last few years there has been a remarkable growth of company unions and employee representation plans in the United States. It has been estimated that there are now between $1\frac{1}{4}$ and $1\frac{1}{2}$ million workers in undertakings having such plans. But very few of these organisations, however, are connected in any way with the trade unions, and as a general rule they are regarded with suspicion by organised labour.

Employee representation plans first came into prominence under the encouragement of the wartime adjustment agencies. The period of most rapid growth, however, took place during the post-war years. Of the many important plans some few may be specially noted, such as the systems in operation in the Standard Oil Company of New Jersey, the International Harvester Company, the Colorado Fuel and Iron Company, the Pennsylvania Railroad, the People's Gas, Light and Coke Company of Chicago, the William Filene and Sons Company Co-operative plan, and the Colombia Conserve Company¹.

These plans of employee representation ordinarily rule out any possibility of stoppages of work, and many of them do not involve collective bargaining on major issues, such as wages and hours of labour. Typically, they are measures for the prevention of friction and for the airing of grievances.

Union management co-operation is a totally different movement, usually originating with the trade unions and involving trade union recognition. The aim is not only to prevent disputes but to promote efficiency of production by co-operation between labour and management and by the creation of better mutual understanding. The plan was first tried successfully by the Balti-

¹ A summary description of a large number of the most interesting plans may be found in *Political and Industrial Democracy*, by W. JETT LAUCK.

more and Ohio Railroad and has since been adopted by several other railroads.

Company unions and union management co-operation are both of them measures tending to some extent to prevent stoppages of work, but they can hardly properly be regarded as agencies for conciliation and arbitration of industrial disputes. Their influence upon labour relations in the United States at the present time is unquestionably great ; but to what extent they represent a lasting form of organisation it is not at present possible to say.

§ 3. — Results and Opinions

The statistics of stoppages of work in the United States are compiled by the Bureau of Labour Statistics from such information as can be obtained from the press and reports of the Conciliation Service, the information thus obtained being verified as far as possible either by correspondence or through the conciliators of the Department of Labour. Since the year 1926 data are given only for those disputes involving six or more workers and lasting for one day or more.

The following table shows the number of stoppages of work and of workpeople involved during the period 1916-1931.

Year	Number of disputes	Number of employees	Year	Number of disputes	Number of employees
1916	2,667	1,599,917	1924	898	654,641
1917	2,325	1,227,254	1925	1,012	428,416
1918	2,151	1,239,989	1926	783	329,592
1919	2,665	4,160,348	1927	734	349,434
1920	2,226	1,463,054	1928	629	357,145
1921	1,785	1,099,247	1929	903	230,463
1922	899	1,612,562	1930	653	158,114
1923	1,199	756,584	1931	894	279,299

PRINCIPAL CAUSES OF DISPUTES BEGINNING IN EACH YEAR

Cause of dispute	Number of disputes beginning in															
	1916	1917	1918	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	1929	1930	1931
Increase of wages . . .	1,301	1,571	1,397	1,115	1,429	120	156	445	255	277	260	142	98	101	62	52
Decrease of wages . . .	35	36	36	86	147	896	261	49	125	117	52	57	53	72	122	264
Increase of wages and decrease of hours . . .	481	378	256	578	269	34	16	58	30	29	39	43	27	75	53	10
Decrease of wages and increase of hours . . .	—	—	—	—	—	77	40	—	7	4	1	1	1	2	4	7
Other causes involving wages	96	115	93	110	121	55	76	144	96	97	101	85	113	125	62	157
Decrease of hours . . .	113	132	79	117	62	294	22	16	18	7	19	20	6	16	5	6
Increase of hours . . .	7	18	6	25	8	18	12	5	5	6	4	3	3	—	1	2
Other causes involving hours	3	18	2	5	2	7	—	4	1	—	2	9	5	23	8	6
Recognition of unions .	404	333	241	522	308	191	137	153	152	109	117	119	71	92	120	116
Recognition and wages .	93	132	79	78	87	106	10	37	21	30	11	20	22	50	24	36
Recognition and hours .	20	27	16	16	6	14	3	6	1	1	—	2	2	1	3	3
Recognition, wages and hours	56	48	49	76	45	11	8	25	7	4	13	7	14	26	18	20
Recognition and other conditions	4	13	7	14	6	6	6	8	9	1	4	23	16	100	5	37
General conditions . . .	68	116	93	123	116	83	72	80	79	89	66	47	17	95	30	18
Discharge of employees	144	246	192	163	170	45	44	79	54	74	61	50	58	41	46	42
Unfair products	7	9	1	5	30	27	18	7	8	4	16	3	7	2	3	1
Sympathy	33	71	35	108	67	36	33	31	22	39	29	23	8	20	12	21
Jurisdiction and protest	19	21	16	16	20	10	10	13	23	59	17	13	33	21	28	19
Other conditions	274	374	294	223	213	192	125	310	228	254	175	—	75	41	47	77
Not reported	631	792	461	250	305	163	63	83	108	100	48	67	—	—	—	—
Total	3,789	4,450	3,353	3,630	3,411	2,385	1,112	1,553	1,249	1,301	1,035	734	629	903	653	894

The record of the Conciliation Department showing the number of cases dealt with during the period 1914-1928 is set out in the following table :

Cases	1914	1915	1916	1917	1918	1919	1920	
Number	33	42	227	378	1,217	1,789	802	
Adjusted	28	26	178	248	865	1,223	596	
Unable to adjust . .	5	10	22	47	71	111	96	
Pending	—	5	21	42	7	13	9	
Unclassified	—	1	6	41	66	214	101	
	1921	1922	1923	1924	1925	1926	1927	1928
Number	457	370	534	544	559	551	545	478
Adjusted	338	266	428	346	392	377	395	307
Unable to adjust . .	48	41	27	62	64	61	57	57
Pending	24	31	60	67	42	43	24	53
Unclassified	47	32	19	69	61	70	69	61

The question of methods of conciliation and arbitration of industrial disputes has not aroused any very great interest in the United States during recent years and there is no very strong movement in favour of a change in the present system. Employers and workers would appear to be practically unanimous in opposing compulsory methods and in deprecating Government interference. The compulsory features of the Kansas Court of Industrial Relations raised a storm of protest from organised labour and from employers alike. The activities of the American Bar Association in favour of collective agreements being made legally enforceable and of the setting up of a Federal Industrial Council — an “ advisory and recommendatory ” body intended to “ facilitate the movement of commerce without wasteful interruption of industry ” — are perhaps the most noteworthy during the last few years.

The direction of American thought and action in this matter was indeed not so much towards the elaboration of methods for dealing with disputes as towards the prevention of disputes at their source by such means as the payment of high wages and the avoidance of wage reductions ; skilled personnel management ; and the co-operation of employers and workers in increasing productive efficiency. These questions do not enter directly into a description of conciliation and arbitration machinery and for

this reason are not dealt with in the present study. But inasmuch as they present an alternative method of approach to the basic question at issue — harmonious relations between employers and workers and continuous operation of industry — they require to be mentioned here. Whether these methods will still be applicable during periods of less intense business activity has yet to be seen.

§ 4. — Summary

The system of conciliation and arbitration in the United States consists of :

- (a) governmental machinery comprising a Federal Conciliation Service, an Act providing for the settlement of railroad disputes, and machinery set up by the various States, together with
- (b) non-governmental machinery for particular industries or for particular undertakings. The Federal Conciliation Service is active and exercises an influence upon a considerable number of disputes.

The system in force on the railroads — the latest of a long series of Acts — is carefully designed and would appear to be effective in its operation. The State systems, with few exceptions, are not much used. The non-governmental machinery set up by various industries and trades has enjoyed a certain measure of success in particular cases. Employee representation plans in individual plants are of relatively recent growth and aim rather at the prevention of disputes than their settlement by conciliation and arbitration. The whole system is characterised by its insistence upon non-compulsory methods.

During recent years there has been a great reduction in the number of stoppages of work and the number of people affected ; but on the whole this would appear due in large measure to underlying economic conditions, successful personnel management and the growth of co-operation between employers and employees rather than to any development in the system of conciliation and arbitration.

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CANADA

§ 1. — Economic Background and Development

Canada, a country slightly smaller in area than Europe, is a self-governing Dominion, part of the British Empire, divided into nine Provinces and two Territories. The Island of Newfoundland, geographically part of Canada, has not availed itself of the opportunity of becoming part of the Dominion. The Provinces have their own legislatures and deal with such matters as have been expressly put within their competence. Otherwise competence lies with the Dominion Parliament.

The population of Canada in 1928 was estimated at 9,658,000, more than half of whom were of British origin and considerably more than a quarter of French origin. Nearly seven-eighths of the population are Canadian born, the majority of the remaining fraction being of British origin. Canada receives a large number of immigrants, ranging between 96,000 and 151,000 per annum during the years 1924-1928.

Canada is largely an agricultural country, only about half of its population living in urban districts. Its manufacturing and mining are, however, of considerable importance. In 1925 there were 544,000 wage and salary earners engaged in manufacturing.

In 1927 the total membership of trade unions in Canada amounted to 290,000. Of these 181,000 belonged to the 85 "international" unions (i.e. unions having members in the United States as well as in Canada)¹.

The two outstanding external factors affecting the outlook, culture, and policies of Canada are its political and sentimental ties with Great Britain and the geographic proximity of the United States.

The chief Canadian law dealing with industrial disputes is the Industrial Disputes Investigation Act of 1907, sometimes known as the Lemieux Act. This Act, however, does not embody the whole of Canadian law for dealing with labour disputes but was enacted as a supplement to two other laws, both of which are still in force. These are the Conciliation Act of 1900 and the Railway Disputes Act of 1903. The first of these Acts created a Department of Labour and provided machinery for mediation or arbitration,

¹ Cf. *Freedom of Association*, Vol. V, p. 121.

but its use was left to voluntary action on the part of the disputants. The Railways Disputes Act gave to the Minister of Labour a limited power of compulsion in the establishment of conciliation boards in labour disputes between railroad companies and their employees. Where such a dispute arose, a board of conciliation could be appointed by the Minister of Labour on the request of either of the parties without consent of the other. In 1906 these two Acts were consolidated, forming the Conciliation and Labour Act of 1906, in which form they are still operative.

In that year, however, a bitter and prolonged strike in the Alberta coal mines, which, although brought to a settlement by the Deputy Minister of Labour, nevertheless inflicted considerable public hardship, revealed the failure of the existing Conciliation Act and demonstrated the need of further legislation. The Industrial Disputes Investigation Act of 1907 was a direct outcome. This Act was amended in 1910, 1918, 1920 and 1925. The 1925 amendment was of particular importance by reason of the fact that the Judicial Committee of the Privy Council of Great Britain had declared (20 January 1925) the Act to be *ultra vires* of the Federal Parliament as being an Act affecting property and civil rights and therefore reserved exclusively to the Provincial legislatures. The amending Act thus rendered necessary laid down the types of occupation which, owing to their Dominion character, came under the jurisdiction of the Act and in addition made it possible for any Province to elect to place itself under the provisions of the Act. Up to the present six of the Provinces have availed themselves of this provision, Prince Edward Island, Ontario and Quebec being the only ones which have not taken such action.

In addition to the Industrial Disputes Investigation Act and the Conciliation and Labour Act already referred to, Canada has had recourse on a number of occasions to Royal Commissions, having as their object the improvement of relations between employers and employed. During the World War, also, certain special measures were put into operation. In 1918 a Railway Board of Adjustment was set up by joint agreement between the Canadian Railways and a number of railway trade unions. A similar tribunal covering the Canadian National Railways was constituted in 1925.

Alongside the Dominion legislation, statutory machinery for the settlement of labour disputes had been set up in Ontario, Nova Scotia, British Columbia and Quebec previous to the Dominion Conciliation Act of 1900, and later Acts were passed by Ontario, Manitoba, Quebec, Alberta and Nova Scotia.

While there is thus a considerable variety of Governmental mea-

asures for dealing with industrial disputes, the Industrial Disputes Investigation Act is the one of outstanding importance. This Act is of especial interest inasmuch as it has been credited by trained observers with a more than ordinary degree of success. Certain of its features have been adopted by other countries, notably Great Britain, South Africa, India and certain States of the United States.

In the present brief monograph attention will be practically confined to this one measure.

§ 2. — The System in Force

The object of the Industrial Disputes Investigation Act of 17 June 1925¹ is essentially the voluntary settlement of disputes before they develop into stoppages of work. It applies particularly to works of public utility and public interest². The instrument employed is a board of conciliation and investigation. This board is an *ad hoc* body consisting of three members, one appointed on the recommendation of the workpeople involved in the dispute, one on the recommendation of the employers, and a chairman appointed on the recommendation of the other two members. The Minister of Labour makes any appointments necessitated by failure to recommend.

SETTING UP OF THE BOARD

A board of conciliation and investigation can be brought into existence in a number of ways. On the occasion of a dispute in certain industries of public utility or interest a board may be set up on the application of *either* party, on the application of any municipality or on the motion of the Minister of Labour. Where the dispute in such industry concerns alterations in wages or hours, application for the setting up of a board is compulsory. Where a dispute occurs in any other industry than those specified, a board may be set up on the application of *both* parties.

FUNCTIONS OF THE BOARD

The functions of the board thus set up are first of all conciliation. If conciliation fails the board's findings are published. These findings set forth the facts and circumstances of the dispute, including the causes, and the board's recommendations for the settlement

¹ Legislative Series, 1925, Can. 1.

² Mining, transportation or communication or public service utility, including railways whether operated by steam or electricity or other motive power, steamships, telegraph and telephone lines, gas, electric light, water and power works.

of the dispute, these latter dealing with each item and stating in plain terms "what, in the board's opinion, ought or ought not to be done by the respective parties concerned". The parties to a dispute may agree to be bound by the recommendation of the board "in the same manner as parties are bound upon an award made pursuant to a reference to arbitration on the order of a court of record". The recommendation thereupon becomes enforceable on the application of either party.

COMPULSORY MEASURES

The most characteristic feature of the Industrial Disputes Investigation Act consists of the provisions enforcing a waiting period before a strike or lock-out is lawful in industries of public interest. Section 56 of the Act lays down that "it shall be unlawful for any employer to declare or cause a lock-out, or for any employee to go on strike on account of any dispute prior to or during the reference of such dispute to a Board of Conciliation and Investigation", while section 57 adds to this that "employers and employees shall give at least thirty days' notice of an intended or desired change affecting conditions of employment with respect to wages or hours; and in the event of such intended or desired change resulting in dispute, it shall be unlawful for the employer to make effective a proposed change in wages or hours, or for the employees to go on strike until the dispute has been finally dealt with by a Board". In both cases the penalty for infringement is a fine, for employers of not less than \$100 nor more than \$1,000 for each day or part of a day that any illegal lock-out or change exists, for employees of not less than \$10 nor more than \$50 for each day or part of a day that such employee is on strike.

Precautions are taken that these provisions shall not be used for purely obstructionist purposes. It is laid down that a board, if its creation is approved, must be established within fifteen days of application. It is further provided that if, in the opinion of a board, either party uses the section relating to the advance notification of changes in wages or hours, or any other provision of the Act, for the purpose of "unjustly maintaining a given condition of affairs through delay", such party shall be guilty of offence and liable to the same penalties as are provided in the case of an illegal strike or lock-out.

MISCELLANEOUS PROVISIONS CONCERNING PROCEDURE

In making application for a board, the applicant, whether representative of workpeople or of employers, must make a statutory

declaration that, failing an adjustment of the dispute in question, a strike or lock-out will be declared and that the necessary authority to declare such strike or lock-out has been obtained.

The board has the power of enforcing the attendance of witnesses, of administering oaths and of enforcing production of books and documents. It may admit and call for such evidence as in equity and good conscience it thinks fit, whether strictly legal evidence or not, and is otherwise given a free hand to make all the investigations it considers necessary. The proceedings are held in public except where, on its own motion or on the application of either of the parties, the board decides to conduct them in private. No counsel or solicitor is allowed to appear before the board except with the consent of both parties to the dispute and of the board itself.

OPERATION OF THE SYSTEM

In the actual operation of the system it is of interest to note that of the applications for boards during the period 22 March 1907 to 31 March 1925, 91 per cent. originated from the employees and only 7 per cent. from the employers. Nine applications (1.4 per cent.) came from employers and employees jointly, while in 4 cases (0.6 per cent.) applications were made by other persons or bodies.

Of the reports made by boards during this same period of 18 years, 54.6 per cent. were unanimous, and in 5.9 per cent. the reservations were on minor points only. In 20.7 per cent. of the cases the employees' representative dissented and in 12.6 per cent. the employers' representative dissented. It would seem on the whole that although the original emphasis was largely on the investigation side of the boards' activities, the intention being to invoke the force of public opinion, the most valuable work has been done by way of conciliation. Little effort is made to give the reports wide publicity and frequently the proceedings of the board are not open to the public inasmuch as it is felt that such action would prejudice the possibility of settlement by conciliation.

The compulsory features of the Act have attracted great attention, but in considering them it is necessary to bear in mind that the Government has adopted the policy of not enforcing the penalties provided but leaving it to the aggrieved party to take action. Between 1907 and 1925, 472 punishable violations of the law occurred, but only 16 of these would appear to have come before the courts. It is held, however, that the presence of the penalty clauses on the Statute Book has a certain value inasmuch as neither employers nor responsible trade unionists wish to

appear as violators of the law since both are eager to obtain the goodwill of the general public. The right of civil action in the event of an illegal strike or lock-out taking place is a question which would not appear to have been raised.

THE CONCILIATION AND LABOUR ACT

After the Industrial Disputes Investigation Act, the most important measure in force in Canada for the prevention and settlement of industrial disputes is the Conciliation and Labour Act. This Act empowers the Minister of Labour to enquire into the causes and circumstances of a dispute, and to take such steps as seem expedient for the purpose of bringing the parties together, appointing a conciliator or an arbitrator when requested by the parties concerned. The Report of the Department of Labour for 1929 states that in recent years there has been a marked tendency on the part of employees to bring their grievances to the attention of the Department before resorting to strike measures, and that in such cases departmental officers have been highly successful in effecting an amicable adjustment of the difficulty.

RAILWAY BOARDS OF ADJUSTMENT

In 1918 a tribunal known as the Canadian Railway Board of Adjustment No. 1 was set up by agreement between those Canadian railways which were members of the Canadian Railway War Board, afterwards the Railway Association of Canada, comprising practically all railways of importance in Canada and six trade unions, namely, the Brotherhood of Locomotive Engineers, the Brotherhood of Locomotive Firemen and Enginemen, the Order of Railway Conductors, the Brotherhood of Railroad Trainmen, the Order of Railroad Telegraphers, and the Brotherhood of Maintenance-of-Way Employees. A new agreement concluded in 1929 is effective until amended or terminated "upon service of thirty days' notice by the one party upon the other".

The Board consists of twelve members, six selected by the Railway Association of Canada and six by the trade unions. It deals with all disputes between the respective railway managements and the employees, members of these trade unions, concerning the interpretation or application of wage schedules or agreements which have not been settled by direct negotiations. Disputes arising out of the negotiation of new agreements as to wages and working conditions are not dealt with. Under the terms of the agreement, decisions of the Board are binding. In the event of a

majority vote of the members of the Board not being obtained, provision is made for the appointment of a referee.

A similar tribunal, the Canadian National Railways Employees' Board of Adjustment No. 2, was organised in 1925 by agreement between the Canadian National Railways and members of the Canadian Brotherhood of Railway Employees, for the purpose of disposing of grievances or disputes which may arise respecting the application, non-application or interpretation of agreements as to wages or working conditions. The Board is composed of eight members, four of whom are selected by the railway management and four by the employees concerned. A majority vote of the full Board is necessary for a decision which is binding upon the parties. Here, also, if no decision is reached provision is made for the appointment of an arbitrator.

PROVINCIAL ACTS

Among the various Provincial Acts the Labour Disputes Act of Alberta provides for boards of investigation and conciliation in labour disputes, within the legislative jurisdiction of the Province, which are not covered by the provisions of the Federal Industrial Disputes Investigation Act. The provisions dealing with the appointment of boards of conciliation, as also the constitution, procedure, functions, powers, etc., of such boards, resemble those laid down under the Federal Statute.

In Ontario, the Trades Dispute Act provides for mediation in labour disputes by a Government official, and also for councils of conciliation and councils of arbitration where the parties to a dispute agree to have the matter submitted.

In Quebec, a measure similar to the Ontario Statute is in existence which, however, does not include municipal employees. For this class of workers there is a special law, the provisions of which prohibit strikes or lock-outs until the matters in dispute have been submitted to a board of arbitration.

§ 3. — Results and Opinions

STATISTICS

Statistics of strikes and lock-outs in Canada are available from the year 1901. The following table showing the number of strikes, number of employees involved and the number of working days lost, resembles the statistics for many other countries

in having a period of marked unrest during the years immediately preceding the world war ; a period during which few stoppages of work took place, during the early years of the war ; a remarkable outburst immediately following the conclusion of hostilities ; and a falling off in the number and seriousness of disputes during the last few years. As will be seen from this table, the increase in the time lost through stoppages of work, while marked, is nevertheless not by any means so large as might have been expected when it is borne in mind that the population of Canada has increased over 70 per cent. during the period in question.

RECORD OF STRIKES AND LOOK-OUTS BY YEARS

Year	Number of disputes		Disputes in existence in the year	
	In existence in the year	Beginning in the year	Employees involved	Time loss in working days
1901	99	97	24,089	737,808
1902	125	124	12,709	202,301
1903	175	171	38,408	858,959
1904	103	103	11,420	192,890
1905	96	95	12,513	246,138
1906	150	149	23,382	378,276
1907	188	183	34,060	520,142
1908	76	72	26,071	703,571
1909	90	88	18,114	880,663
1910	101	94	22,203	731,324
1911	100	99	29,285	1,821,084
1912	181	179	42,860	1,135,786
1913	152	143	40,519	1,036,254
1914	63	58	9,717	490,850
1915	63	62	11,395	95,042
1916	120	118	26,538	236,814
1917	160	158	50,255	1,123,515
1918	230	228	79,743	647,942
1919	336	332	148,915	3,400,942
1920	322	310	60,327	799,524
1921	168	159	28,257	1,048,914
1922	104	89	43,775	1,528,061
1923	86	77	34,261	671,750
1924	70	64	34,310	1,295,054
1925	87	86	28,949	1,193,281
1926	77	75	23,834	266,601
1927	74	72	22,299	152,570
1928	98	96	17,581	224,212
1929	90	88	12,946	152,080
1930	67	67	13,768	91,797
1931	88	86	10,738	204,238
	3,939 ¹	3,822 ¹	993,241 ¹	23,069,983

¹ In these totals figures for disputes extending over the end of a year are counted more than once.

In common with other countries, stoppages of work in Canada are to a disproportionately large extent attributable to workers in mines, particularly coal mines. Between 1907 and 1924 40.7 per cent. of the total days lost were on account of strikes and lock-outs in the coal mining industry.

The statistics of the causes of stoppages show that wage disputes or disputes in which wages entered as a factor accounted for approximately two-thirds of the number of days lost, questions concerning the recognition of a union being the only other considerable cause of serious stoppages of work.

Turning to the statistics of conciliation by means of the Industrial Disputes Investigation Act, we have the interesting record set out in the following tables :

PROCEEDINGS UNDER THE CANADIAN INDUSTRIAL INVESTIGATION
ACT, 1 APRIL 1928 TO 31 MARCH 1929, AND 22 MARCH 1907
TO 31 MARCH 1929

Industries affected	1 April 1928 to 31 March 1929		22 March 1907 to 31 March 1929		
	Number of appli- cations for boards received	Number of boards estab- lished	Number of strikes not averted or ended	Number of appli- cations for boards received	Number of strikes not averted or ended
1. Disputes affecting mines, transportation and communi- cation, other public utilities, and war work :					
Mines :					
Coal	3	2	1	78	11
Metal	—	—	—	20	5
Asbestos	—	—	—	1	0
Transportation and communi- cation :					
Steam railways	7	3	0	212	7
Street and electric railways	4	3	0	115	7
Express	—	—	—	12	1
Shipping	1	0	0	35	0
Telegraphs	—	—	—	24	1
Telephones	—	—	—	8	0
Miscellaneous :					
Light and power	2	0	0	27	3
Elevators	—	—	—	1	0
War work	—	—	—	30	1
2. Disputes not falling clearly within the direct scope of the Act	8	5	0	143	2
Total	25	13	1	706	38

¹ Including three cases left over from preceding year.

DISPUTES DEALT WITH UNDER THE INDUSTRIAL DISPUTES INVESTIGATION ACT, 1907, DURING THE PERIOD 1907-1928

	1907 ¹ 9 mths.	1908	1909	1910	1911	1912	1913	1914	1915	1916	1917	1918
Number of applications .	25	27	22	28	21	16	18	18	15	29	53	93
Number of boards granted	22	25	21	23	16	16	15	18	12	16	37	59
Number of disputes where strike not averted (or ended) . .	1	1	4	4	4	3	1	1	1	1	1	2
	1919	1920	1921	1922	1923	1924	1925	1926	1927	1928	Total	
Number of applications .	70	61	54	42	22	28	4	14	26	25	711	
Number of boards granted	47	41	26	29	17	13	0	9	13	13	488	
Number of disputes where strike not averted (or ended) . .	3	5	2	2	1	0	1	0	0	1	39	

¹ The Act became law on 22 March 1907, so that the proceedings cover nine months only.

Taking the eighteen years between 22 March 1907 and 31 March 1925, during which the Act was in full operation, 640 applications for boards were made, 536 cases were handled under the Act and 421 boards were actually constituted. Of the 536 disputes handled under the Act, 490 (91.4 per cent.) resulted in the stoppage of work being averted or brought to an end. Of these 536 disputes, 473 occurred in public utility industries, 23 in war industries and 40 in other industries.

During this same period, however, there were 425 strikes in public utilities, in which the Act was completely ignored and in 47 of the disputes in public utilities in which applications were made for boards, strikes occurred in violation of the Act. Thus, during the eighteen years of full operation of the Industrial Disputes Investigation Act, 472 stoppages of work in public utilities occurred in violation of the Act, while 429 stoppages of work were averted or ended by means of the Act.

OPINIONS

The present attitude of workers and employers towards the Industrial Disputes Investigation Act would appear on the whole

to be favourable. Up to 1918 organised labour was opposed to the Act. The main grounds for this opposition would seem to be two in number : first, that it was impossible in most cases for the representatives of employers and workers to agree upon a suitable person as chairman and it was feared that the official selected by the Minister of Labour would be inclined to favour the employers ; second, that too much time elapsed both in establishing boards and in submitting reports, with the result that employers were given the opportunity of preparing for a strike, and the workers, if dissatisfied with the conclusion reached by the boards, had to strike at an unpropitious moment. Since 1918, however, organised labour in Canada, while continuing to urge certain amendments, has shown itself on the whole in favour of the Act. This may be attributed in part to the adoption of certain amendments meeting the objections stated above and particularly to the fact that from 1918 onwards former trade union officials have been appointed to the Ministry of Labour, and although no trace of serious allegation of favouritism would appear to exist, such appointments have gone far towards allaying labour suspicions.

Canadian employers have criticised the Act from several points of view. They have pointed out that the power of the Minister of Labour to appoint the personnel of boards may give an advantage to the workers. They have urged that there is a certain want of finality about the Act, inasmuch as employees are free to renew demands and apply for a board immediately after an award has been made and accepted. They have also objected to an amendment passed in 1925 which, from their point of view, puts an unfair burden upon management when facing the necessity of immediate reductions in wages. It would seem, however, that these criticisms are in the main based on hypothetical considerations rather than on actual instances.

§ 4. — Summary

The chief measure for the conciliation and arbitration of disputes in Canada is the Industrial Disputes Investigation Act first adopted in 1907. Since then it has been several times amended but without changing its essential nature, although its territorial scope is no longer Dominion-wide. The most interesting features of this Act are the compulsory clauses prohibiting any stoppage of work in public utility undertakings until the question has been

dealt with by a board of conciliation and investigation. These boards consist of three persons, one appointed on the recommendation of the workpeople involved in the dispute, one on the recommendation of the employers, and a chairman appointed on the recommendation of the other two members. In point of fact, these compulsory clauses are frequently ignored, and the penalties provided are rarely enforced. The boards, however, have achieved considerable success as conciliation agencies, and the whole system has attracted attention in, and been imitated by, a number of other countries. During the eighteen years 1907-1925, in which the Act was in full operation, 429 stoppages of work were averted or ended by means of the Act. The present attitude of workers and employers would, on the whole, appear to be favourable towards its continuance. In addition to the Industrial Disputes Investigation Act, the Conciliation and Labour Act, 1906, makes provision for voluntary conciliation. There is moreover a certain amount of Provincial legislation on the question.

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See also files of *Canadian Labour Gazette*.

LATIN AMERICA

ARGENTINE REPUBLIC

§ 1. — Economic Background and Development

In 1927 the Argentine Republic had an estimated population of 12,000,000, spread over an area of 1,112,743 square miles. Apart from its natural increase, the population has for many years been swollen by a constant stream of immigration. From 1876 to 1925, 3,160,293 immigrants entered the country, most of whom came from Italy, Spain, France, Turkey, Germany, Great Britain, the Central European countries, Switzerland, North America, the Netherlands, and Sweden.

Argentina is predominantly an agricultural country, and most of its inhabitants live on the land. The principal crops cultivated are wheat, flax, sugar and vine ; cattle raising is also important. Industry has made considerable progress, particularly as regards the working up of agricultural products, as for instance in the meat refrigeration, leather and wool industries. The country also has important oil-fields, especially in the district of Comodoro Rivadavia, which had an output of about 620,000,000 litres in 1929.

Argentine statistics provide no detailed information on the occupational distribution of the population. An authority on economic matters (Dr. Alexander Bunge) has estimated, on the basis of the 1914 census, that the working population then amounted to 2,355,130 persons, of whom 462,463 were employed in agriculture and cattle raising, 813,438 in industry and handicrafts, 97,786 in transport, and 254,536 as labourers and in miscellaneous occupations. These figures give some idea of the size of the working population, when it is borne in mind that they refer to the year

1914¹. In Buenos Ayres, the Federal capital, which is situated in the principal industrial region, the working population in 1929 was some 500,000 out of a total of 2,000,000².

The labour movement in the Argentine Republic is of some importance. In 1916 the agricultural workers formed the Argentine Land Workers' Federation (*Federación agrícola argentina*), with a membership of 860, which had risen to 14,855 in 1925, but most of the unions have been formed by industrial workers. Until recently there were three central workers' federations: the Argentine Confederation of Labour (*Confederación obrera argentina*), which in 1929 had a membership of some 100,000; the Argentine Trade Union Federation (*Unión sindical argentina*), which in 1922 covered 320 trade unions; and the Argentine Regional Confederation of Labour (*Federación obrera regional argentina*), which is anarchist in tendency and had about 10,470 members in 1927. In September 1930 the two most important federations (the Confederation of Labour and the Trade Union Federation) united to form a new organisation under the name of the General Confederation of Labour (*Confederación general del trabajo*), which comprises over 200,000 workers, including railway and transport workers, seamen, tramwaymen, workers in public undertakings in the clothing industry, cabinet-makers, etc. One of the most efficiently organised unions is the Argentine Railwaymen's Union (*Unión ferroviaria argentina*), which in 1930 had a membership of 120,000³.

The Argentine Republic has no Federal legislation concerning the settlement of labour disputes by conciliation and arbitration. Owing to the occurrence of a large number of strikes throughout the country, especially among the railway workers, the Government decided to issue an Order of 12 December 1922 providing for the setting up of a conciliation board and an arbitration court for the settlement of all collective disputes on the railways⁴.

Neither the conciliation board nor the arbitration court were permanent institutions. If a settlement was not reached by conciliation, the dispute was to be referred to an arbitration court convened by the Board of Management of the State Railways,

¹ Alejandro UNSAIN: *Legislación del Trabajo*, Vol. I, p. 55. Buenos Ayres, 1926.

² *Memoria del Ministerio del Interior presentada al H. Congreso de la Nación, 1929-1930*. Departamento Nacional del Trabajo, Buenos Ayres.

³ *U. S. Freedom of Association*, Vol. V, pp. 156 o seq.

⁴ INTERNATIONAL LABOUR OFFICE: *Legislación social de América latina*, Vol. I. Geneva, 1928.

which was to hold its proceedings within five days of its constitution. The arbitration court was to consist of two arbitrators, nominated one each by the parties within five days, and a third appointed directly by the Minister of Public Works or the Board of Management of the State Railways, acting on the instructions of the Minister of Public Works. It was the duty of the court thus constituted to investigate the dispute and deliver its award within a period of thirty days.

The result of its proceedings was to be communicated to the Board of the State Railways with a view to its observance by the parties. The award was not binding on the parties, and failure to comply with it was punishable neither under civil nor criminal law. The Order merely provided that undertakings involved in the dispute which failed to comply with the award, to appear at the proceedings, or to appoint representatives, should be liable to the penalties stipulated under sections 91-93 of the General National Railways Act. If the wage-earning or salaried employees concerned failed to appoint their representative for the arbitration court within the specified time limit, they were held to have abandoned their claims.

The conciliation and arbitration system set up by the Order of 12 December 1922 did not long remain in force. On 4 January 1923 all the railway undertakings in the country submitted a joint memorandum to the Government, claiming that the Order lacked a legal basis and that the Government was not entitled to prescribe such procedure merely in virtue of its own powers. Two of the railwaymen's organisations — the National Railwaymen's Association (*Asociación ferroviaria nacional*) and the Railwaymen's Union (*Unión ferroviaria*) — expressed themselves in favour of the Order, and demanded that the Government should immediately put it into operation, but the Treasury representative and the Attorney-General, in his declaration of 31 July 1923, supported the view of the railway undertakings, and the Order remained a dead letter.

This decision had the effect of protracting the duration of strikes in the railway services. The Government has since found itself obliged to resort to direct intervention in order to settle a number of serious disputes that have broken out since 1923.

The lack of any statutory conciliation and arbitration system for the settlement of collective labour disputes has been felt more and more strongly. Both Parliament and Government have considered the question on various occasions, and the creation

of special judicial bodies for the settlement of collective labour disputes has been contemplated¹.

The various Bills submitted to Parliament on this subject fall into two groups, the first providing for the creation of special conciliation boards and arbitration courts, and the second proposing to create bodies comprising only one magistrate but forming part of the ordinary judicature.

Among Bills of the first kind may be mentioned that introduced by Senator Valle Iberlucia (1919), while Deputy del Barco sponsored one of the second kind in 1916. An important proposal was also put forward by Dr. Sanchez Sorondo, suggesting the creation of labour juries for the settlement of disputes arising out of the application of individual contracts of employment and collective agreements. In 1919 the Chamber of Deputies appointed a special Committee to investigate this proposal.

The draft Labour Code² submitted to the Chamber by the Government on 8 June 1921 proposed special procedure for the settlement of collective labour disputes. It provided in the first place that the provincial governors should enact the legislation necessary for the prevention of strikes, and that the measures adopted should provide for conciliation and, in the event of its failure, compulsory arbitration. It also made more detailed provision for the settlement of collective labour disputes in the Federal capital. Section 19 of Chapter II laid down that on the outbreak of a strike the parties must within forty-eight hours submit their difference to a conciliation board (*junta de conciliación*) consisting of the President of the National Labour Department, as chairman, and one employers' and one workers' representative, together with four substitute members, to be appointed by the Government. Members of the board were to hold office for a period of one year, being eligible for re-election. The board might also co-opt a workers' and an employers' representative from the industries concerned.

The draft Code empowered the conciliation board to require the parties to produce all particulars necessary for the investigation and settlement of the dispute. The procedure was to be carried out with all possible speed, and was to terminate with an award settling the various questions laid before the board. If the

¹ Alejandro UNSAIN, *op. cit.*, Vol. I, p. 168.

² *Proyecto de Código del Trabajo. Presentado por el Poder Ejecutivo en la sesión del 8 de junio de 1921.* Cámara de Diputados de la Nación. Buenos Ayres, 1921.

conciliation board were unable to bring about a settlement, it was to suspend its activities after recording its failure in a report. If the parties agreed to accept a settlement based on the proposals of the board, the dispute was to be regarded as terminated, and work was to be resumed within twenty-four hours.

The draft Code further provided that, should the conciliation board fail to bring about a settlement, the parties were bound to submit their difference to arbitration procedure undertaken by a labour magistrate, a new authority specially created by the Code for this purpose. The decision of the arbitrator was to be final and binding for the period specified in the award. Penalties were also provided in the event of failure to comply with an arbitration award. They were, in the case of workers' organisations involved in the strike, loss of the rights legally secured to such organisations, and, in the case of the members of their executive committees who had signed the agreement at the arbitration proceedings, the penalties provided for contempt of court (*desacato*). The same penalties were provided for salaried employees and workers who disregarded the arbitration award by striking. Employers who failed to observe the award or did not enforce it within twenty-four hours were to be liable to pay compensation to the workers concerned, and were further punishable by a fine varying from 500 to 2,000 pesos, according to the importance of the dispute.

A later Bill, drafted by a committee set up by the Government in 1925 under the chairmanship of Dr. Carlos Saavedra Lamas, provided a detailed system of procedure for conciliation and arbitration in collective labour disputes. This Bill again stipulated that collective disputes must first be submitted to a conciliation board, and, should this fail to bring about agreement between the parties, to an arbitration court. The conciliation board and arbitration court were again to be jointly constituted by employers' and workers' representatives, with an independent chairman. The conciliation board might also act as an arbitration court, subject to the previous agreement of its members. The conciliation board and the arbitration court were to terminate their proceedings within a specified time limit of fifteen and twenty days respectively. No judicial remedies were provided in respect of awards in disputes affecting public utility undertakings, which were to be binding on the parties, the penalties for non-observance being specified in the award itself. In other cases no penalties were provided, but the employers were bound not to impose on their

workers conditions less favourable than those laid down in the award, and workers or employees who ceased work were to refrain from every kind of strike propaganda.

Finally, a draft Labour Code submitted to the National Congress by Senator Molinari on 26 September 1928¹ provided in its fifth book, under the heading "Labour Disputes" (*Las relaciones de guerra*), for the setting up of special courts for the settlement of collective labour disputes, empowered to issue final decisions. The court was to consist of two employers' and two workers' representatives from the industries concerned, with a chairman appointed by the Government. It was to give its decision within eight days, and its award was to be binding.

§ 2. — Present Provincial Legislation

Although there is no statutory Federal legislation on the settlement of collective labour disputes by conciliation boards and arbitration courts, a rather summary form of procedure has been set up for this purpose in the Federal capital and in the provinces.

The Act of 8 October 1931², which set up the National Labour Department, provided that in the event of disputes between capital and labour the President of the Department might convene labour councils (*consejos de trabajo*) and preside over their meetings. The councils were to consist in every case of an equal number of employers and workers, and all collective labour disputes were to be submitted to them for decision.

The provision made by this Act for the intervention of the President of the National Labour Department applies only to the Federal capital and territories, the provinces being entitled to enact their own measures on this matter.

Province of Córdoba

Act No. 2,385 of 1 September 1914, which set up the Provincial Labour Office, stipulates that in the event of disputes between capital and labour the Director of this Office shall appoint a

¹ *Crónica Mensual del Departamento Nacional del Trabajo*, No. 138, Aug. 1929. Buenos Ayres.

² INTERNATIONAL LABOUR OFFICE: *Legislación social de América latina*. Geneva, 1928.

committee and preside over its meetings. The committee is to consist in each case of an equal number of employers' and workers' representatives, and the dispute must terminate with its decision (section 7).

The Act invests this committee with both conciliatory and arbitral powers, and its decisions are final. The committee is formed immediately on the outbreak of a collective dispute.

The Act neither lays down rules of procedure for the committee nor provides penalties for non-observance of its decisions. The Administrative Regulations of 15 September 1914 make the Legislative and Statistical Section of the Provincial Labour Office responsible for the creation of labour councils to arbitrate in collective disputes.

Province of Corrientes

The Act of 21 April 1926 to set up a Statistical and Labour Department also introduced a form of conciliation and arbitration procedure¹ by prescribing the creation of permanent local labour committees (*juntas locales de trabajo*) in the chief centres of each district to improve the economic and social relations between employers and workers. The Act stipulates that in the event of a collective dispute, and even before it occurs, the committee shall intervene as mediator. The committees consist of the head of the local administration or chairman of the municipal council, who acts as chairman of the committee, and one employers' and one workers' representative from the locality.

The Act does not lay down detailed rules for the procedure to be adopted in settling labour disputes, or provide for penalties in the event of failure to observe its decisions.

Province of Mendoza

The Administrative Regulations under Act No. 731 of 9 January 1919, which set up the General Labour Inspectorate, provide for mediation by this body in the event of strikes and disputes between employers and workers. They do not, however, specify in what way or through what agency this mediation is to be effected.

¹ Dr. MORET, Carlos, junior : *Leyes del trabajo, nacionales y provinciales*. Buenos Ayres, 1928.

Province of Salta

The Act of 13 July 1931, which set up the Provincial Labour Department, invested this body with certain functions in connection with mediation in labour disputes, but its provisions are^a as indefinite as those for the Province of Mendoza.

Province of Tucumán

An Order of 1 May 1915 set up a Chamber of Labour, (*Cámara de Trabajo*) to be constituted by the trade associations of the province, every organisation of at least 500 members and every group of three organisations, irrespective of its membership, being entitled to nominate one representative. Among its various functions, the Chamber was required to settle disputes between capital and labour. The Order does not indicate the form of procedure to be adopted, or provide for penalties in the event of failure to observe the award.

An Order of 10 December 1917, setting up the Labour Department, also stipulates that the governing body of this Department shall act as mediator in collective disputes.

§ 3. — Statistical Data

There can be no doubt that the lack of any Federal legislation on conciliation and arbitration is partly responsible for the increase in the number, gravity and duration of strikes in the Argentine Republic. Most of the serious strikes have occurred in Buenos Ayres, which is the largest industrial centre, and have been settled by means of Government intervention.

The strike statistics for the period 1907 to 1929 show the importance of collective labour disputes, which at times have seriously dislocated the economic life of the country. This is particularly true of collective disputes among maritime workers, which have sometimes had the effect of paralysing the country's foreign trade.

The following tables give particulars of strikes in the Federal capital during the period 1907-1929 :

(a) STRIKES

Year	Number of strikes	Workers affected			
		Men	Women	Young persons	Total
1907	231	155,348	5,230	8,439	160,017
1908	118	8,992	1,390	1,179	11,561
1909	138	4,389	14	359	4,762
1910	298	18,316	481	9	18,806
1911	102	26,687	1,200	105	27,992
1912	99	8,515	290	187	8,992
1913	95	22,769	802	127	23,698
1914	64	14,112		25	14,137
1915	65	9,804	2,216	57	12,077
1916	80	24,140	139	42	24,321
1917	138	133,859	785	1,418	136,062
1918	196	121,170	6,644	5,228	133,042
1919	367	293,518	9,579	5,870	308,967
1920	206	127,449	4,154	2,412	134,015
1921	86	131,923	4,989	2,839	139,751
1922	116	4,471	152	114	4,737
1923	93	17,700	7,047	743	19,190
1924	71	200,640	56,906	18,432	275,978
1925	86	11,085	2,355	522	13,962
1926	62	11,793	2,908	704	15,405
1927	56	36,663	225		36,888
1928	137	377,948	77,619	22,063	73,989
1929	117	52,545	304	252	52,161

(b) CAUSES OF STRIKES

Year	Wages	Hours of work	Right of association	Contract of employment	Miscellaneous	Total
1907	67	46	91	9	18	231
1908	31	21	52	2	12	118
1909	62	22	49	—	5	138
1910	175	27	75	—	21	298
1911	36	9	46	2	9	102
1912	37	16	27	6	13	99
1913	34	11	40	5	1	95
1914	32	5	21	5	5	64
1915	32	4	19	10	—	65
1916	32	2	25	15	6	80
1917	56	9	47	3	23	138
1918	78	23	62	3	30	196
1919	240	21	90	6	10	367
1920	92	8	82	19	5	206
1921	27	2	53	2	2	86
1922	36	—	54	1	19	116
1923	28	11	49	3	2	93
1924	10	7	39	4	11	71
1925	36	6	34	4	23	86
1926	32	3	18	6	3	62
1927	—	—	—	—	—	58
1928	—	—	—	—	—	137
1929	32	7	59	10	9	117

(c) RESULTS

Year	Successful strikes		Unsuccessful strikes		Partially successful strikes		Total	
	Number	Workers affected	Number	Workers affected	Number	Workers affected	Number	Workers affected
1907	39	4,366	161	163,473	31	1,173	231	169,017
1908	18	1,945	88	9,546	12	70	118	11,561
1909	36	527	97	3,713	5	522	138	4,762
1910	185	13,499	66	3,395	47	1,912	298	18,806
1911	7	4,216	92	20,534	3	2,242	102	27,992
1912	25	1,627	68	6,702	6	663	99	8,992
1913	18	775	62	19,154	15	3,769	95	23,698
1914	18	6,277	42	2,216	4	5,644	64	14,137
1915	17	1,605	42	9,482	6	990	65	12,077
1916	19	9,600	46	2,891	15	11,830	80	24,321
1917	26	22,924	74	3,666	38	76,472	138	136,062
1918	71	23,978	83	82,062	42	27,002	196	133,042
1919	145	181,064	147	88,877	75	39,026	367	308,967
1920	66	17,867	103	96,005	37	20,143	206	134,015
1921	12	21,345	69	116,472	5	1,934	86	139,751
1922	17	1,157	94	3,440	5	140	116	4,737
1923	11	922	73	13,162	9	5,106	93	19,190
1924	5	251	63	272,495	3	3,232	71	275,978
1925	17	4,194	66	9,708	3	60	86	13,962
1926	13	12,913	49	2,492	---	---	62	15,405
1927	11	9,143	45	17,093	2	12,000	58	38,256
1928	---	---	---	---	---	---	137	73,989
1929	24	7,616	77	---	16	---	117	52,101

§ 4. - Summary

The Argentine Republic has no statutory Federal conciliation and arbitration system. The Act of 1921 to set up a National Labour Department, which covers the capital and the Federal territories, and the legislation in force in the provinces contain certain provisions for the statutory regulation of conciliation and arbitration procedure, but their results have been negligible.

The gravity of the problem is evident from the statistics. The introduction of a satisfactory conciliation and arbitration system would undoubtedly help to confine the number of collective disputes which in the past have so frequently dislocated the economic life of the country, within reasonable bounds in future.

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BOLIVIA

Bolivia, with a population of about three and a half million distributed over an area of some 500,000 square miles, is predominantly a mining country, although its agriculture is also assuming increasing importance. The chief substance mined is tin, of which Bolivia has the second largest output in the world.

There are no statistics of the occupational distribution of the Bolivian population. During recent years the labour movement has made substantial progress, particularly in the mining districts, where the most important central federations are to be found. These include the *Federación obrera de Oruro*, the *Federación obrera de Uyuri*, the *Federación de Tarija*, the *Federación de Potosí y la Sucre*, the *Federación ferroviaria y la Federación del Trabajo de La Paz*, and, finally, the *Federación de Corocoro*. The Confederation of Labour covers twenty-four trade unions and about thirty workers' organisations. No data are available concerning the size of their membership.

For some years disputes between capital and labour, especially collective labour disputes, were regarded as within the province of the police. All proposals for the settlement of disputes were put forward by the administrative authorities. The most serious strikes were those in the mining industry.

An Order of 29 September 1920¹ provided for the setting up of conciliation boards (*consejos de conciliación*) for the purpose of dealing with strikes and lock-outs, consisting of one representative of the Government, two of a Chamber of Commerce or Mines, and one each nominated by the parties to the dispute.

The Order lays down that every collective labour dispute must be submitted to the conciliation board for settlement. If conciliation is unsuccessful, the parties must submit to arbitration by the conciliation board or by arbitrators of their own choice.

Arbitration decisions are binding on the parties without the intervention of an ordinary court. The Order does not specify

¹ *Legislative Series*, 1920, Bol. 1.

details of procedure, nor does it provide for the event of failure to comply with the decisions of the conciliation board.

It should be pointed out that the Order of 29 September 1920 formally recognises the right to strike, although it denies this right to public servants¹. Strikes or lock-outs must, however, be notified to the administrative authorities five or, in the case of certain public utility undertakings, eight days in advance. Failure to comply with this provision renders the offender liable to a fine.

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¹ REPÚBLICA DE BOLIVIA : *Legislación minera, petrolera y social*. La Paz, 1928.

BRAZIL

ECONOMIC BACKGROUND

Brazil covers an area of nearly $8\frac{1}{2}$ million square kilometres, and in 1929 had a population of some 31 million. It is divided into twenty separate States, one Federal District and one National Territory. As in the Argentine Republic, the natural growth of the population has been supplemented by immigration, which during the first hundred years of the country's independence brought an influx of some $3\frac{1}{2}$ million persons, including about a million Italians and a million Portuguese. In so large a country almost every branch of economic activity — agriculture, mining and industry — is represented. The most important agricultural product is coffee. The substances mined include gold, iron and coal, precious and semi-precious stones. Industry is important principally in the State of São Paulo ¹.

There are not yet any accurate statistics of the working population of Brazil. According to information on the occupational distribution of the population, published in 1930 by the Brazilian National Labour Office, about 610,000 workers were employed in the manufacturing industries and 140,000 on the railways and in ports. The municipal transport services also employed about 40,000 workers, bringing the total number of industrial workers up to nearly 800,000.

Owing to the vast extent of the country and its division into separate States, the labour movement lacks unity and co-ordination.

As in most of the Latin American States, the labour movement was limited for a long time to the formation of mutual aid organisations. The first trade unions in the strict sense of the term date from the beginning of the twentieth century, among the earliest being the Stokers' Union, founded in Rio de Janeiro in 1903, and the Dockers' Union, founded in the same year, which in 1930 had some 3,000 members. In 1906 the transport workers formed an organisation which now has a membership of some 10,000.

¹ For further details, cf. *Annuaire du Brésil économique et financier*, Paris, 1929, and *The South American Handbook*, London, 1930.

After the war the trade union movement became more active, and a number of organisations sprang up, most of which are affiliated to the General Confederation of Labour of Brazil. Printing operatives have also organised themselves into the Printing Workers' Union in Rio de Janeiro and São Paulo. Several organisations have been set up by railway workers in State and private transport services. They include the Union for the Protection of Central Brazil Railway Workers and the Railwaymen's Unions of Campinas, the Leopold Railway, São Paulo, etc.

In 1919, the General Confederation of Labour was formed in Rio de Janeiro to act as a central organisation. Apart from this, there is also a Unitary Seamen's Federation with about 100,000 members, and a Railwaymen's Federation with about 120,000 members (1920), while another central organisation, the National Confederation of Labour, was set up by the workers' federations in 1929¹.

PRESENT SYSTEM

Brazil has no special federal legislation concerning collective labour disputes. Section 8 of the earlier Act of 5 January 1907 concerning trade associations and co-operative societies contained the following provision :

Trade unions founded for the purpose of promoting agreement between employers and workers that set up permanent conciliation and arbitration boards for the settlement of disputes between capital and labour shall be regarded as the legal representatives of the workers as a whole².

It is evident from this provision that when trade unions were formed they were entitled, in conjunction with the employers, to set up permanent conciliation and arbitration machinery for the settlement of disputes between capital and labour independently of the public authorities. The Act did not, however, at the same time make it compulsory to submit all collective disputes to the bodies thus set up by the trade associations.

A later Order, No. 16027 of 30 April 1923, which prescribed the creation of a General Labour Council, specified (section 2) that " the General Labour Council shall study conciliation and arbitration systems with a view to the prevention and settlement of collective labour disputes ".

¹ Cf. *Freedom of Association*, Vol. V, pp. 175 et seq.

² INTERNATIONAL LABOUR OFFICE : *Legislación social de América latina*.

This somewhat ambiguous provision also omits to lay down any obligation for the State to intervene in collective labour disputes ; it simply instructs the General Labour Council to examine the possibility of drafting a Bill concerning conciliation and arbitration. It must be assumed from the information available that the Labour Council has never investigated this important problem.

Most of the numerous strikes, which have occurred principally in the two industrial States of Rio de Janeiro and São Paulo, have been settled by means of direct negotiation between the parties without State intervention. Lack of any statistics of labour disputes makes it impossible to estimate the number, scope or importance of the disputes that have broken out in Brazil during recent years.

A Legislative Decree, No. 19770 of 19 March 1931, superseding the Act of 5 January 1907, introduced new regulations concerning the right of combination for trade purposes. Under section 6 of this Decree, all trade associations and federations are required to co-operate with the public authorities, through the medium of permanent joint conciliation and arbitration boards, in the application of the legislation for the settlement of disputes between employers and their wage-earning and salaried employees¹. The Decree also provides that trade associations shall have the right as legal persons to conclude collective agreements between their own members and other trade associations, or with undertakings or employers, on the basis of legislation subsequently to be enacted. On 4 March 1932, the Minister of Labour, Lindolpho Collor, submitted to the Prime Minister a draft Order concerning the setting up of conciliation and arbitration boards, together with a Bill concerning collective labour agreements. This provides that in towns and localities where there are trade associations constituted in accordance with the law joint conciliation committees shall be set up by the Ministry of Labour for the settlement of disputes between employers and workers arising out of the enforcement of collective agreements. The committees are to consist of a chairman and six, nine or twelve members, according to circumstances, with a corresponding number of substitute members. One-third of the members are to be nominated by the workers, one-third by the employers and one-third by the Ministry of Labour. The employers' and workers'

¹ *Legislative Series*, 1931, Braz. 1.

representatives must be appointed by the Ministry from panels submitted by each party. Members of the committee will be appointed for a period of two years. They must be Brazilian nationals, at least 21 years old, in full possession of their civil rights, and able to read and write. Employers and workers directly involved in the dispute may not serve on these committees.

The proceedings of the committees will be held in private. If a dispute arises, the chairman must, within 48 hours, convene the committee, which immediately summons the parties and attempts conciliation. If no settlement is reached, the committee meets again three days later to make a final attempt at conciliation on the basis of any fresh proposals that may have been put forward. It may also order an adjournment for the purpose of establishing the facts.

Failure to bring about agreement through conciliation must be recorded in a report, and the committee then proposes that the parties shall submit the dispute to arbitration. If this proposal is accepted, the parties must give a written undertaking to comply with the arbitration award. The arbitrator is to be chosen jointly by the parties, the members of the conciliation committee being eligible as arbitrators. An award issued by the arbitrator must be accompanied by the reasons on which it is based and must be signed by all the parties concerned, or by their representatives. The original document must be transmitted to the Ministry of Labour and a copy sent to each of the parties. If the parties refuse to submit the dispute to arbitration, the chairman of the committee must transmit the minutes to the Ministry of Labour, or to the competent authority, within twenty-four hours. A notable provision of the Order is that prohibiting an employer from declaring a lock-out pending the investigation of a labour dispute by the conciliation committee. Failure to comply with this provision is punishable by a fine of from 500 milreis to 10 contos. The same penalty is provided for any party that refuses to comply with an arbitration award.

It remains to be seen whether the draft Order summarised above will be adopted by the Brazilian Government, and in what form ¹.

¹ MINISTERIO DO TRABALHO, INDÚSTRIA E COMERCIO : *Comissões mistas de conciliação : Anteprojecto do decreto que as institue*. Rio de Janeiro, 1931.

SUPPLEMENTARY NOTE

On 12 May 1932¹ the Provisional Government of Brazil issued Decree No. 21396, which provided for the institution of mixed conciliation committees. The new regulations repeat on all important points the provisions of the above-mentioned Collor Bill, but the following alterations or additions should be noted.

A committee is composed of a chairman appointed by the Minister of Labour and two, four or six members, with an equal number of substitutes, nominated half by the employers and half by the workers. Members must have had an occupation for at least two years ; they officiate for one year.

If the parties refuse to submit the dispute to the committee, the case is referred by the chairman to the Minister of Labour, who may appoint a special committee or issue an award himself.

¹ *Legislative Series*, 1932, Braz. 4.

CHILE

§ 1. — Economic Background and Development

According to the census of 27 October 1930 Chile then had a population of nearly 4,300,000¹, distributed over an area of slightly over 750,000 square kilometres. Unlike that of the Argentine Republic and Brazil, the increase of population of Chile has not been due to immigration, which is practically negligible, the excess of immigrants over emigrants in 1930 being only 1,500 persons². The country's chief sources of wealth are its minerals, which include nitrate, copper, iron and coal. Agriculture, too, is important. As regards industry, in 1929 Chile had about 9,000 industrial undertakings employing some 150,000 persons, the most important being boot and shoe, cement, glass, match, paper, cigarette, and textile factories.

Chilian statistics provide no satisfactory information on the occupational distribution of the population. On the basis of official publications, however, the working population (salaried and wage-earning employees) may be estimated at about 1,700,000³. Further indications on this subject may be gleaned from the 1929 report of the compulsory sickness insurance funds; at the end of the year these funds, which under Chilian legislation cover all workers with a yearly income of less than 8,000 pesos, had a membership of 1,330,000⁴.

The labour movement in Chile has made great progress during recent years. In 1927 there was one central workers' organisation, the Workers' Federation of Chile, which comprised seven provincial organisations and nine national trade federations⁵. There are now 269 trade unions, affiliated some to the Trade Union Federation of Chile, which was founded in 1930, and some to the Workers'

¹ GENERAL STATISTICAL OFFICE : *Population Census of 27 October 1930*.

² CONTROLARÍA GENERAL DE LA REPÚBLICA : *Estadística chilena*. Nov. 1930. Santiago.

³ *Boletín del Ministerio de Higiene y Asistencia social*, No. 2, June 1927.

⁴ *Memoria del Ministerio de Bienestar Social del año 1929*. Santiago, 1930.

⁵ For further details, cf. *Freedom of Association*, Vol. V, pp. 188 et seq.

Social Congress (*Congreso social obrero*). The bakers', seamen's and railwaymen's unions each have their own central organisation.

In 1903 a big strike broke out in Valparaíso, accompanied by rioting and bloodshed. Other strikes in the nitrate district and in Santiago having also led to disturbances, the Government finally became convinced of the urgency of finding some means of settling collective disputes. In view of the difficulties in the way of any attempt to get a Bill on this subject passed by the Chamber, it issued an Order on 14 December 1907 providing that in the event of a collective dispute between employers and workers arising out of conditions of employment, the Governor's representative, at the request of one of the parties, should invite employers and workers to nominate three representatives each to form a conciliation committee. It would be the duty of this committee to investigate the matter under dispute and to propose terms of settlement. If conciliation was unsuccessful, the authorities were to propose that an arbitration board should be formed, consisting of one employers' and one workers' representative together with a third person to be nominated jointly by the parties, or if necessary by the President of the Republic. The decision of the arbitration board was final. The Order further provided that all strikes and lock-outs must be notified to the authorities in advance¹.

This Order represents the first practical attempt made in Chile to bring collective disputes under statutory regulation.

An Order of 24 October 1921 set up a conciliation committee and arbitration board for collective disputes in ports. It laid down provisions similar to those described above, and in particular prescribed that all strikes and lock-outs must be notified to the competent maritime authorities five days in advance.

In 1917 Deputy Rivas Vicuña introduced a Bill for the institution of permanent joint committees for the settlement of collective labour disputes, consisting of six members representing employers and workers. This Bill stipulated that all disputes arising out of conditions of employment should be submitted by the parties to the administrative authorities, who should thereupon invite the employers and workers, either *ex officio* or on request, to set up a conciliation committee under the chairmanship of the Governor of the province².⁴ The conciliation committee was in the first place to attempt to bring about agreement between the parties ;

¹ OFICINA DEL TRABAJO : *Boletín* No. 11. Santiago, 1918.

² *Boletín de sesiones de la Cámara de Diputados*. Santiago, 1917.

if this attempt failed, an arbitration board was to be constituted, consisting of one employers' and one workers' representative and one independent member. The Bill provided various penalties for non-observance of the decisions of the conciliation committees and arbitration boards. It was examined by the Parliamentary Committee on Social Affairs, but did not come before the Chamber itself.

A more detailed Bill, also providing for conciliation and arbitration boards in collective disputes, was drafted by the Labour Office, together with another providing for similar boards to deal with disputes in the mining industry ¹.

Most of the strikes that broke out in Chile during the years 1908 to 1924 were settled under the Order of 1907, including, in particular, the big strikes in the coal-mining industry in 1921-1923 and a seamen's strike in 1923. The disputes were terminated by arbitration awards issued by prominent personalities, appointed sometimes by the parties and sometimes by the Government.

Chapter IX of the draft Labour Code submitted to the National Congress in 1921 by the President of the Republic, Dr. Arturo Alessandri, provided for the setting up of conciliation committees and arbitration boards ². This chapter was debated by the National Congress apart from the rest of the Code, and adopted on 8 September 1924 ³. This new Act put an end to the practice of treating strikes in most cases as offences against public order and suppressing them through the medium of the police rather than through the administrative authorities.

Under the Act of 8 September 1924 conciliation and arbitration procedure has two stages, corresponding to the dual form of trade union organisation in Chile. In the first place, there are the workers' delegations in each undertaking, who together with the employer's representatives must try to avert any threatened disputes. If agreement is not reached by this means, the difference is submitted to a permanent conciliation board and subsequently, if necessary, to an arbitration court. The Act is described in detail in the International Labour Office's study of freedom of association in Chile, to which the reader may be referred ⁴.

The Act was amended in certain respects by a Government

¹ *Boletín de la Oficina del Trabajo de Chile*, No. XI, No. XIII and No. XV, 1922, 1923 and 1924.

² CÁMARA DE DIPUTADOS : *Proyecto de Código del Trabajo*. Santiago, 1921.

³ *Legislative Series*, 1924, Chile 5.

⁴ *Freedom of Association*, Vol. V, pp. 195 et seq.

Order of 31 December 1927¹. This Order aimed at a thorough reorganisation of the committees and boards set up by various social laws and was intended by the Government to put an end to the duplication of bodies for the settlement of individual and collective labour disputes. It was evidently designed to supersede the Act of 8 September 1924 and to replace it by a system of tribunals each consisting of a single judge.

Both the Industrial Inspectorate, however, and apparently the Ministry of Welfare also, questioned the legality of this Order². At all events, the Government Order of 31 December 1927 was repealed by Legislative Decree No. 178 of 13 May 1931, which embodies the Chilean Labour Code and contains the legislation at present in force concerning conciliation and arbitration in collective disputes.

§ 2. — The System in Force

Chapter II of Book IV of the Legislative Decree of 13 May 1931³ restores the main features of the system set up by the earlier Act of 8 September 1924, which divided conciliation and arbitration procedure into two main stages, i.e. conciliation in the undertaking itself and conciliation before a permanent committee, followed, if necessary, by arbitration.

In every undertaking employing more than ten workers no stoppage of work may be declared either by the workers or by the employer until all the resources of the conciliation proceedings provided under the Act have been exhausted. When a difference liable to give rise to a collective dispute occurs in an undertaking, or when such a dispute has actually broken out, the wage-earning and salaried employees concerned must appoint a delegation of five persons to approach the head of the establishment or his representative with a view to the settlement of the dispute. The members of the workers' delegation must be over 25 years of age and must have been employed in the undertaking for the last six months. The head of the undertaking is bound to receive the workers' delegation, either in person or through his representative, within 24 hours after receiving a written request to this effect,

¹ *Memoria del Ministerio de Bienestar, Social correspondiente a los años 1924-1925-1926-1927*, p. 143. Santiago, 1929.

² Cf. *El Mercurio*, 17, 18 and 21 Oct. 1930. Santiago.

³ *Legislative Series*, 1931, Chile 1.

under penalty of a fine of up to 5,000 pesos. He may not delay his reply by more than five days unless a longer period is fixed by agreement with the delegates. An employer who either in person or through his representatives puts obstacles in the way of the delegates in carrying out their duties is liable to a fine of 100 to 1,000 pesos.

The Act also provides that permanent workers' delegations may be appointed in agreement with the head of the undertaking.

From the outbreak of the dispute onwards the employer may not suspend any worker from employment unless he commits an offence against the property of the undertaking or incites the general public to boycott the products of the undertaking.

If the conciliation proceedings within the undertaking itself break down, the dispute must be referred to one of the permanent conciliation boards to be set up in each department of the Republic, or to a special conciliation board which under the provisions of the Act may be formed *ad hoc* for particular kinds of undertakings.

The conciliation boards consist of six members, of whom three are chosen by the employers, two by the workers, and one by the salaried employees, and have their headquarters in the chief town of each department. The local labour inspector acts as chairman of the board, but is not entitled to vote.

The Act lays down in detail the procedure to be followed in electing the members of the conciliation board. The employers' and the workers' trade unions in the department concerned must each submit a list of three names to the Government; where there is no local employers' association, the central employers' organisations may be authorised by the Government to provide representatives. The members of the board are chosen by lot from among the names on these lists.

Members of the board must be Chilean nationals, over twenty-five years old, who have been resident in the department for the last six months and have not been sentenced for any offence against the law. In order to protect the workers' and employees' delegates in the exercise of their functions and to prevent retaliation on the part of the employer, the latter is forbidden to dismiss the workers and employees serving on the committee from his employment.

Within forty-eight hours of the outbreak of the dispute, the conciliation board must require both parties to submit the case to it. Refusal on the part of either of the parties entails a fine of 500 to 5,000 pesos for the employer and 100 to 1,000 pesos for

a trade union. The board may also order the offending trade union to be wound up.

The chairman of the board prescribes the conditions for the hearing of the parties and the number of their representatives. The employers or their legal representatives must attend the sittings of the committee in person. The agents appointed by the parties must belong to the undertakings affected by the strike.

The board must first hear the employers and workers separately, and must try to bring about a settlement. If it succeeds, the settlement must be recorded in a document to be signed by the chairman of the committee and the employers' and workers' representatives. If the parties reject the board's proposals and fail to resort immediately to arbitration, it must draw up a report on the particulars of the case, including an extract of the discussions and a statement of the causes of the dispute and the difficulties involved, and of the duties which in its opinion are incumbent upon each of the parties in respect of the various points in dispute. If the conciliation proceedings have ended in an agreement between the parties, but subsequently one of the parties refuses to carry it out, the chairman of the conciliation board must order the publication of a similar report stating which of the parties has refused to carry out the agreement.

The Act further provides that if conciliation proceedings finally break down, the parties may agree to submit the dispute to arbitration, or, if they do not, arbitration may be proposed by the chairman of the conciliation board. But if a strike or lock-out has already occurred the arbitration court may not take cognisance of the dispute until work has been resumed.

The arbitration court consists of one to three arbitrators appointed jointly by the parties. If the parties cannot agree on the choice of an arbitrator, the appointment must be made by the Minister of Social Welfare at the request of one of the parties. The procedure to be followed by the court is laid down in detail by the Act, which provides for the replacing of any arbitrator who is unable to attend the sessions and also invests the arbitration court with special powers of investigation. It may call on the assistance of the industrial inspectors and of experts, and must be assisted by the members of the conciliation board before which the dispute was brought in the first instance.

The arbitration award must be adopted by a majority vote if there are several arbitrators and issued within the thirty days following the constitution of the court. This period may be

extended by the court by not more than a further thirty days. The arbitration award, which must be made public in an appropriate manner, is binding on the parties for at least six months. In the case of stoppages of work in a public undertaking or service which directly imperil the health and economic life of the community, the Government may take all necessary steps to ensure the continuance of work, and if necessary may issue a special order to this effect. The Act does not specify the precise nature of such measures.

In general a strike or lock-out may not be declared until all methods of reaching agreement by conciliation and arbitration have been exhausted. Moreover, a strike may not lawfully be declared unless (*a*) the term of notice for the termination of any collective agreement in force has expired ; (*b*) the strike has been agreed upon by an absolute majority of the persons voting at a secret ballot in which at least two-thirds of the members of the union took part ; and (*c*) a delegate appointed by the competent permanent conciliation board has ascertained that the requirements of the Act have been complied with. Similar provisions apply to the declaration of a lock-out by an employer, and there are also sections safeguarding the liberty to work which prohibit threats, the placing of obstacles in the way of work, and sabotage under penalty of imprisonment. Apart from the provisions intended to avert collective disputes and the penalties mentioned above, which are intended to guarantee the observance of conciliation and arbitration legislation, provision is also made for the enforcement of arbitration awards. An employer who fails to comply with an arbitration award may not engage any workers on terms less favourable than those laid down in the award for the period of its duration ; while any workers who fail to comply with an award may be summarily dismissed without notice. In the case of a trade union, a fine of 100 to 1,000 pesos may be imposed, and the union may be wound up by order of the board.

Finally, a general provision prescribes a fine of 50 to 1,000 pesos for offences against the Act for which no special penalty is provided. The fines, which are imposed and collected in the manner prescribed in another part of the Act, are paid into the State Treasury.

3§. — Statistical Data

The following tables give particulars of strikes in Chile during the period 1910-1930 :

TABLE I

Year	Number of strikes	Number of workers affected	Number of working days lost
1910	3	1,310	19
1911	10	4,762	35
1912	19	11,154	131
1913	17	10,877	204
1914 (first half) . .	5	829	55
1915	—	—	—
1916	16	18,524	244
1917	26	12,074	365
1918	30	24,329	277
1919	66	23,529	729
1920	105	50,438	811
1921	24	6,703	192
1922	19	5,296	— ¹
1923	41	12,299	— ¹
1924	86	34,356	1,085
1925	113	51,198	907
1926 ¹	—	—	—
1927 } ²	—	—	—
1928 }	—	—	—
1929 }	—	—	—
1930	1	110	3 ³

TABLE II

Causes of Strikes

Year	Wages and salaries	Hours of work	Right of association	Contract of employment	Miscellaneous	Total
1910.	2	—	—	1	—	3
1911.	10	—	—	—	—	10
1912.	11	2	—	1	5	19
1913.	12	—	—	2	3	17
1914.	2	—	1	2	—	5
1915.	—	—	—	—	—	—
1916.	11	—	3	2	—	16
1917.	11	—	—	15	—	26
1918.	23	—	—	7	—	30
1919.	24	5	7	—	30	66
1920.	43	—	34	18	10	105
1921.	13	—	6	3	2	24
1922.	—	—	—	—	—	19
1923.	—	—	—	—	—	41
1924.	57	17	7	5	—	86
1925.	80	21	—	12	—	113
1926 ¹	—	—	—	—	—	—
1927-1929 ²	—	—	—	—	—	—
1930.	1	—	—	—	—	1

¹ There are no official statistics of the duration of strikes in 1922, 1923 and 1926.

² There are no official strike statistics for 1927, 1928 and 1929, but it appears from the presidential messages to Congress that no strikes occurred in Chile during these years. It is worth mentioning that this period corresponds to the accession of President General Ibañez to the presidency.

³ *El Mercurio*, Santiago, 14 Nov. 1930.

TABLE III
Results of Strikes

Year	Successful strikes	Unsuccessful strikes	Partly successful strikes	Total
1910	2	—	1	3
1911	1	1	8	10
1912	2	7	10	19
1913	5	4	8	17
1914 (first half) . .	1	4	—	5
1915 ¹	—	—	—	—
1916	1	2	13	16
1917	6	12	8	26
1918	15	3	12	30
1919	16	11	39	66
1920	6	49	50	105
1921	9	7	8	24
1922-1923 ¹	—	—	—	—
1924	24	24	38	86
1925	—	30	70	113
1926 ¹	—	—	—	—
1927-1929 ²	—	—	—	—
1930	—	—	1	1

¹ and ² Cf. footnotes on previous page.

§ 4. — Summary

After a period of preliminary experiment, a comprehensive statutory conciliation and arbitration system was introduced in Chile by the Act of 8 September 1924. The original system was altered in various respects by a Government Order of 31 December 1927, the legality of which was contested by influential authorities, but was re-established in its main lines in the Labour Code introduced by the Legislative Decree of 13 May 1931.

It provides in the first place for conciliation procedure within the undertaking itself, between the management and a workers' delegation. If this is unsuccessful, the proceedings are continued before a permanent joint conciliation board, and if this also fails to bring about a settlement, arbitration procedure may be instituted with the consent of the parties. The arbitration award is binding on the parties for a minimum period of six months. Extensive but unspecified powers are conferred on the Government in connection with the settlement of disputes in undertakings of vital public importance.

Adequate safeguards are provided for the enforcement of the conciliation and arbitration legislation. In the first place the declaration of a stoppage is forbidden until all the possibilities of conciliation and arbitration have been exhausted, under penalty of a fine and the winding up of the offending trade union, and even after that rendered difficult by various regulations. Further penalties ensure that the parties shall comply with the results obtained by conciliation. Arbitration proceedings may not be instituted without the consent of the parties, but if an award has been issued, there are definite means of enforcing it.

COLOMBIA

§ 1. — Economic Background and Development

Colombia has an area of 440,846 square miles. In 1928 its population was some eight million, of whom 7 per cent. were aboriginal natives, 5 per cent. Negroes, and the remainder mestizos and whites. There has been no increase in the population through immigration, which is quite a negligible factor. The principal source of the country's wealth is agriculture, the most important products being coffee, tropical fruits, tobacco, cotton, sugar, cocoa and hemp. The central region of Colombia is covered with vast forests extending over some 150 million acres.

The country is rich in minerals, which include gold, silver, platinum, copper, coal and salt. It also has large deposits of precious stones, particularly emeralds. Industry is still at an early stage of development. There are a few large spinning mills in Medellín and Bariniquillas and there are also electric power works, cement works, tanneries, chocolate factories and a number of mills.

Colombian statistics provide no precise information on the occupational distribution of the population, and it is extremely difficult to give even a rough estimate of the number of workers employed in the various branches of industry in the country. In 1929, 642 public industrial undertakings in Bogotá, the capital, had in their employment 168,324 persons¹. The number of workers employed in the mining industry is about 7,000.

It is only during recent years that the labour movement has developed in Colombia. The most important of the workers' federations have been formed in the main industrial districts, the largest and most influential being the Western Trade Union Federation (*Federación obrera sindical de Occidente*). There are also a certain number of trade unions in the mining districts, particularly in Cali. Another important workers' federation is the Central Trade Union Federation of Colombia (*Unión obrera*

¹ REPÚBLICA DE COLOMBIA, MINISTERIO DE INDUSTRIA : *Boletín de la Oficina Nacional del Trabajo*, Feb. 1930. Bogotá.

sindical de Colombia), which has its headquarters in Bogotá. The membership of the various workers' federations in 1928-1929 was about 11,000¹.

§ 2. -- The System in Force

The right to strike is governed in Colombia by the Act of 19 November 1919. Conciliation and arbitration in collective labour disputes were introduced by the Act of 4 October 1920².

The Act divides the procedure for the settlement of labour disputes into three stages: direct negotiation, conciliation, and arbitration.

If a collective dispute occurs which may result in a stoppage of work, the wage-earning or salaried employees concerned must nominate a delegation of three persons to submit their demands directly to the head of the undertaking. The delegates must be adult Colombian nationals who have been employed in the undertaking affected by the dispute for at least six months, a provision that in most cases has the effect of excluding trade union officials from the negotiations. The head of the undertaking must receive the delegation within twenty-four hours of receiving its request, and must give his answer within five days unless otherwise agreed between the parties; failure to comply with these provisions renders him liable to a fine of 10 to 100 pesos. Should the parties reach agreement, this must be recorded in a report, an authenticated copy of which must be sent to the principal political authority of the district. The conditions of employment thus fixed are binding for the period specified in the agreement.

In case of failure to conclude an agreement by means of direct negotiation, the dispute must be submitted to conciliation procedure undertaken by a third person, nominated by agreement between the parties, or by two persons nominated one by each of the parties concerned. The conciliators must be Colombian nationals above the age of twenty-one years and must be acquainted with the affairs of the undertaking. They must enter on their duties within the twenty-four hours following their nomination and must immediately convene the representatives of the parties and require them to submit all relevant information.

The representatives of both parties are bound to appear before

¹ Cf. *Freedom of Association*, Vol. V, pp. 216 et seq.

² *Legislative Series*, 1920, Col. 1.

the conciliators whenever summoned, and to submit all the particulars they may require. This information must be treated as confidential, and the conciliators may not make any use of it without the permission of the persons concerned.

The conciliators must endeavour to bring about a settlement within forty-eight hours, unless by agreement with the parties this period is extended. The Act provides that in principle the decisions reached by the conciliators are not binding on the parties, but if the latter conclude an agreement which is recorded in a report this has the force of a collective agreement. The report must be signed by the representatives of the parties and by the conciliator or conciliators. In case of failure to conclude an agreement, the conciliators must record this fact in their report and give their opinion as to whether the dispute should be submitted to arbitration. A copy of this document must be transmitted to the political authorities.

Except in the cases specified below, arbitration procedure is optional and a dispute can be brought before the arbitration court only if both employers and workers have agreed to submit their difference to arbitration. In such case each party must nominate an arbitrator, who may be selected from among the conciliators. A third arbitrator is selected jointly by the parties ; if they fail to agree on a choice, he must be the principal political authority of the district.

The arbitration court has power to require the parties to appear, to carry out all necessary investigations, and if need be to visit the premises concerned. It cannot hold its deliberations unless all the members are present. Within eight days of its constitution it must issue its award, which must immediately be notified to the parties. No strike or lock-out may be declared during the proceedings.

Arbitration is compulsory in all undertakings in which a stoppage of work would endanger the safety, health or economic existence of the nation, particularly in transport undertakings, i.e. railways, tramways, inland and maritime navigation, water, gas and electricity works, public health institutions and hospitals, and State mines.

Penalties are provided for failure to observe the procedure for the settlement of collective labour disputes. Any person who hinders the conciliators or arbitrators in the performance of their duties, or any person summoned before the conciliation board or arbitration court who fails to appear without sufficient excuse, may be punished by a fine of 10 to 100 pesos, or imprisonment at the rate of one day for every two pesos. An arbitrator who fails

without good reason to attend all the proceedings of the court is liable to a fine of 100 to 500 pesos. Any person who publicly incites others to a collective stoppage of work in a case in which arbitration is compulsory, or who incites others to disregard the provisions of the Act or the arbitration award, or who insults the members of the arbitration court in the exercise of their duties may be punished by a fine of 10 to 100 pesos.

The authority competent to inflict these penalties is the mayor (*alcalde*) who may do so by summary procedure. Appeal against his decision may be made to the authority immediately superior to him.

Further, Act No. 73 of 15 November 1927¹, to amend Act No. 83 of 12 November 1923, which set up a General Labour Office, specifies (section 7) that it is the special duty of the Labour Office to supervise the observance of the laws relating to strikes. For this purpose it may intervene *ex officio* or at the request of the parties in collective disputes between employers and employees, with a view to averting a stoppage of work by all lawful means in its power².

Under section 11 of this Act the Director of the Labour Office and the members of the Governing Body, after hearing the views of employers and workers in disputes which arise between them, may constitute themselves a labour council, and when they are in possession of all necessary data may issue an award in disputes referred to them by employers and workers for settlement. The award is binding on both parties and terminates the intervention of the Office in the case referred to it for settlement.

An Order of 3 May 1930³ amended the above provision relating to the constitution of labour councils and specified that if employers and employees agree to refer a dispute to the labour council for settlement, they must draw up a written application stating the causes of the dispute and giving proof of each point. As soon as the Director and members of the Governing Body of the Labour Office receive this application they must proceed to set up a labour council. If, when the council meets, it considers that it has not sufficient material to undertake the investigation of the dispute, it may allow a period of fifteen days for the parties to produce evidence in support of their claims. On the expiry of this period the labour council must fix a date for the hearing, after which it must give its decision within twelve days. The

¹ *Legislative Series*, 1927, Col. 3.

² INTERNATIONAL LABOUR OFFICE: *Legislación social de América latina*, Vol. II, p. 46. Geneva, 1929.

³ *Legislative Series*, 1930, Col. 1.

legislation at present in force concerning the settlement of labour disputes does not provide for any penalties in the event of failure to observe the decisions of the labour council, nor does it specify a period after which the decision becomes binding.

§ 3. — Results and Proposals for Reform

Owing to the inadequacy of official statistics, it is not possible to estimate the practical results of the legislation concerning labour councils. Generally speaking, however, it may be said that most of the disputes that occurred during 1930 were settled by the application of the provisions summarised above.

There are no official strike statistics. Most of the strikes have occurred in the mining and industrial districts of Bogotá and Cali.

In 1930 the Colombian Government appointed a committee to draft a labour Code, which was transmitted to the competent authorities in July. Chapter III of this draft Code provides for the settlement of collective labour disputes. In all industrial undertakings, establishments or plants in which more than ten workers are employed on the basis of a collective agreement, strikes and lock-outs are forbidden. Disputes arising out of the enforcement of collective agreements must be submitted to a labour council consisting of a chairman, a lawyer and the members of the General Labour Office. The draft Code also provides that works' councils (*consejos de empresas*) shall be set up in all industrial and agricultural undertakings employing more than thirty workers, to deal with all disputes arising out of matters other than the application of collective agreements. These works' councils are to consist, in undertakings employing not more than 100 workers, of three representatives of the management and three representatives of the staff; in undertakings employing more than 100 workers, the number of representatives may be increased to five. It is the function of the works' councils to settle disputes by friendly mediation. In cases which they fail to settle, the parties must nominate a conciliator; should the latter also fail to bring about agreement, the dispute must be referred to an arbitration court. The decision of the arbitration court is binding for a period of one year¹.

¹ *Boletín de la Oficina del Trabajo.*

CUBA

The Act of 9 June 1924 ¹ lays down rules for the fixing of wage scales and procedure for the settlement of collective labour disputes. It provides that conciliation boards shall be set up in every port of the Republic in which there are workers employed in industrial and maritime occupations.

The provisions of this Act are described in the study of *Freedom of Association* ², published by the International Labour Office, to which, in the absence of any subsequent amendments to the law, the reader may be referred.

¹ *Legislative Series*, 1924, Cuba 1.

² *Freedom of Association*, Vol. V, pp. 313 et seq.

ECUADOR

The Republic of Ecuador has no statutory provision for the settlement of collective labour disputes.

In 1928 a series of important social measures was enacted, including the Hours of Work Act, the Weekly Rest Act, the Employment of Women and Children Act, the Act concerning individual contracts of employment, and, finally, an Act regulating procedure in individual labour disputes.

The whole of the legislation of Ecuador contains only one provision relating to collective labour disputes. This may be found under Chapter II of the Regulations of 29 July 1926 concerning the labour inspectorate (section 8)¹, and specifies that it is one of the duties of labour inspectors "to investigate as required and in advance any causes which may give rise to disputes between employers and workers and to communicate the particulars to the General Directorate. In the event of a strike they shall draw up a special report giving the circumstances preceding the strike, the phases through which it has passed, and the measures which it is necessary to adopt in order to prevent a recurrence".

¹ *Legislative Series*, 1926, Ec. 1 B.

GUATEMALA

§ 1. — Economic Background and Development

Guatemala has an area of 110,000 square kilometres, with a population which in 1928 was estimated at 2,454,000.

Like most of the Central American States, Guatemala is mainly dependent on its agriculture, the principal products being coffee, cane sugar, bananas and cotton. It also has silver and lead mines. Manufacturing industry is still in its infancy, but there are a few important cotton mills, especially in Quezaltenango, some sack factories, rope factories, and a number of tanneries.

As no occupational statistics exist for Guatemala, the number of workers employed in industrial and agricultural undertakings cannot be given.

The labour movement has made great progress and of all the Central American States Guatemala is perhaps that in which labour is most effectively organised. The most important central organisation is the Guatemala Confederation of Labour for the Legal Protection of the Workers (*Federación obrera de Guatemala para la Protección legal de los Trabajadores*), which covers most of the workers' organisations in the country¹.

§ 2. — The System in Force

Sections 44 to 61 of the Labour Act, No. 1434, of 30 April 1926² lay down procedure for the settlement of collective labour disputes between employers and their wage-earning or salaried employees, and provide that conciliation committees and arbitration boards shall be set up for this purpose.

The conciliation committees consist of six persons, chosen from a panel of twelve names drawn up, in the event of a collective

¹ Cf. *Freedom of Association*, Vol. V, pp. 243 et seq.

² *Legislative Series*, 1926, Guat. 1.

labour dispute, by the employers and workers. The members are chosen by lot by the Director of the National Labour Department, in the presence of the persons concerned and of a justice of the peace, and with the co-operation of the Secretary of the National Labour Department. On the outbreak of a dispute the employers or workers who wish to resort to conciliation procedure, or their representatives, must submit an application to the National Labour Department specifying (a) the cause of the dispute, (b) the persons or undertakings to whom proceedings are to be proposed, and (c) the names of six persons proposed by the applicants as members of the conciliation committee.

Within twenty-four hours of receiving this proposal for conciliation the Director of the National Labour Department must notify it to the other party through the competent justice of the peace. The persons or undertakings concerned must reply within three days, failure to do so being held to constitute refusal of conciliation procedure. If they agree to the proposal, the conciliation committee, for which they too must nominate six members, is formed in the manner described above.

The committee thus constituted sits under the chairmanship of the Director of the National Labour Department. Its function is limited to trying to bring about agreement between the parties. Should the attempt fail, the committee must record its failure in a written report. The employers and workers must then nominate one or several arbitrators, up to a maximum of three for each party, to form an arbitration board.

The arbitration board must issue an award, after examining the points submitted to it for investigation.

If questions of fact that are capable of proof are involved, the board may allow a period of ten days for the parties to produce their proofs. The decision must be issued within eight days of the date on which the case was referred to the board or of the date on which the period allowed for the production of proofs expired.

Should the members of the arbitration board fail to agree on an award, they must appoint an umpire to give the casting vote.

Arbitration awards are legally enforceable and binding for a period of from one to three years.

The Act further prescribes that, pending the investigation of the dispute by a conciliation committee or arbitration board, the existing conditions of employment may not be altered, wage-earning or salaried employees may not be dismissed, and a strike or lock-out may not be declared. In the case of a dispute in a

branch of the public services, railways, harbours, the power supply, or services for the supply of the necessities of life, notice of a strike or lock-out must be given fifteen days in advance, and in all other cases eight days in advance.

Failure to comply with the above provisions is regarded by the Act as an offence against public order, and is punishable by imprisonment for three years. No penalty is provided in the event of failure to comply with the arbitration award.

In the absence of statistics or other official data, no information can be given on the results of the operation of the conciliation and arbitration system in Guatemala.

MEXICO

§ 1. — Economic Background and Development

The area of Mexico is about 1,970,000 square kilometres ; its population at the census of 1930 was some 16½ million.

Mexico has considerable mineral wealth, and mining (gold, silver, copper, lead, mercury and arsenic) constitutes one of her principal industries ; silver mining is particularly important, for half the world output of that metal is produced in Mexico. The production of petroleum is also large. Agriculture has been much developed, the chief crops being sugar cane, maize and other cereals, cotton, rice and coffee. Industry too has made great strides in Mexico in recent years. The most recent occupational statistics show the following distribution of the working population : agriculture and fisheries : 3,470,000 persons ; mines, 279,000 ; factories, 632,000 ; and commerce, 270,000 ¹.

The labour movement in Mexico ² is bigger and better organised than that of any other Latin American country. The most powerful workers' organisation is the Mexican Regional Confederation of Labour (*Confederación Regional Obrera Mexicana*), which had 1,500,000 members in 1929. There are other central organisations of considerable size which are not affiliated to this body, such as the Transport Workers' Federation, with 100,000 members, and the Federation of Workers and Salaried Employees in the Printing Trades.

The movement has suffered much from the political troubles which the country has gone through since the beginning of the twentieth century. At present the organised workers have a great deal of influence and have vigorously and successfully pressed their claims on successive Governments since 1915.

¹ For further details see *Estadística Nacional*, Revista mensual del Departamento de Estadística Nacional, April 1931, March 1932. LEAGUE OF NATIONS : *International Statistical Yearbook*, Geneva, 1930-31.

² As the International Labour Office study on *Freedom of Association* does not deal with Mexico, the Mexican trade union movement is treated here rather more fully than that of other countries.

As in all the Latin American countries, the first workers' organisations in Mexico were definitely mutual aid societies, one of the most important of which, the Mutual Thrift Society (*Sociedad Mutualista de Ahorro*), was founded in 1907. But this type of organisation did not satisfy the needs of the working classes, for it could not effectively defend their occupational interests, and it was obviously for this reason that they abandoned it.

As a result of a widespread strike in the industrial areas of Mexico — Rio Blanco, Logales and Santa Rosa (Veracruz) — the Government prohibited all collective expression of opinion by the workers, particularly in Orizaba, the centre of the spinning industry. The textile workers of that area then founded the *Círculo de Obreros Libres*, which became the centre for the propagation of the workers' demands and soon counted more than 80 affiliated unions. Its activity led to the spread of the trade union spirit all over Mexico.

On 2 May 1911 the Printers' Federation (*Confederación Tipográfica*) was founded; established in Mexico City and renamed a few years later the *Confederación Nacional de Arte Tipográfica*, it was for several years the most important central workers' organisation in the country.

The same year saw the foundation of the Federation of Stone Masons in the Federal District (*Unión de Canteros del Distrito Federal*), an organisation of communist tendency. The founders of the trade union movement also planned about this time the establishment of a central organisation to include all workers with views of a communist nature. This was the National Confederation of Workers (*Confederación Nacional de Trabajadores*). The World Workers' Union (*Casa del Obrero Mundial*) was also formed, and undertook a great propaganda campaign among the Mexican working classes. It trained the leaders of the trade union movement, which made great strides as a result of its efforts. Up to 1917 it had not been possible to bring all the workers' organisations into one central confederation, but in that year a national congress to deal with the question was convoked by the Tampico trade unions.

The congress actually met at Saltillo in 1918, the most important workers' organisations being represented. The result was the foundation of the Regional Confederation of Labour, with an initial membership of about 7,000. The numbers increased steadily and reached 1,000,000 in 1929.

The social and political influence of this organisation has

made itself felt in the social legislation of all the States of the Mexican Republic. Its political influence was very marked for a time, and it took part in the discussions on the Government's various drafts for the proposed Labour Code. In 1928 political differences led it to withdraw its support from the Government and go into opposition. A large number of unions which did not approve of this action then left the Confederation; this accounts for the decrease in its membership. According to the statistics of the Labour Office, 534 unions were affiliated on 15 March 1930.

Other figures, issued by the Statistical Office, show that there were then 2,435 workers' unions, 211 mutual aid societies with rather more than 30,000 members, and 154 employers' associations. There is a Railwaymen's Federation (*Alianza de Ferrocarrileros Mexicanos*) not affiliated to the Confederation. Another central organisation which deserves mention is the General Workers' Confederation (*Confederación General de Trabajadores*), composed of the Federation of Workers in the Federal District and local federations of unions in various industries, in particular the textile industry, scattered over the whole country. Ninety-six unions are affiliated to this organisation, which is of an anarchist-syndicalist tendency and strongly opposed to the policy of the Regional Confederation. A movement towards fusion among the Mexican workers' organisations has, however, recently been apparent.

In view of the strength of the Mexican trade union movement, it was not unnatural that social legislation developed comparatively early. The first steps were taken principally in the individual States of the Union, which were originally competent in this field; but the Constitution of 1917 (section 123, subsection 20) laid down certain guiding principles for the adjustment of individual and collective labour disputes. Such disputes were to come before a conciliation and arbitration board composed of a representative of the Government and equal numbers of employers and workers. Subsection 21 of the same section went on to provide *that if the employer refused to submit the dispute to arbitration or to comply with an award made by the board, the contract of employment was deemed to be terminated and the employer was required to pay the worker compensation to the extent of three months' wages. Should the workers act in a similar way, the contract was deemed to be terminated.*

Most of the individual States of Mexico adopted these principles

in their legislation, and in many cases complete Labour Codes were drafted with the object of creating a judicial system for the adjustment of labour disputes. There were institutions for this purpose — usually including municipal and central conciliation and arbitration boards — in all parts of the country. Above this State machinery the Act of 17 September 1927 established a Federal Conciliation and Arbitration Board in Mexico City, to be competent as follows :

- (a) in disputes in the Federal District and Territories ;
- (b) in collective disputes arising in industries and businesses which are carried on under a Federal contract or concession, e.g. railways, oilfields, mines ;
- (c) in disputes affecting more than one State, District or Territory ;
- (d) in disputes in which the jurisdiction of the Federal Government has been accepted in writing by the representatives of the employers and workers.

District conciliation and arbitration boards were also set up by decision of the Ministry of Commerce, Industry and Labour in pursuance of an Order of 26 September 1927, and conciliation and arbitration boards and municipal boards for the purpose were established in the Federal District and Territories.

Numerous Acts and Decrees governed the judicial functions and procedure of these boards. They were composed of equal numbers of employers and workers from the various industries concerned, the latter being elected by the trade unions. In Mexico City the Federal Conciliation and Arbitration Board divided itself for several years into five different sections to deal with the many cases brought before it ; during 1927, 1928 and 1929 it was called on to intervene in 3,521 disputes in Mexico City alone, and in the first six months of 1930 a further 657 cases came before it.

Figures published by the Mexican Statistical Office show the activity of the Federal Conciliation and Arbitration Board in disputes occurring in all parts of the Republic to have been as follows :

Year	Number of cases dealt with	Number of strikes	Number of lock-outs
1924	10,260	41	23
1925	27,614	12	13
1926	20,889	2	6
1927	7,941	13	16
1928	8,529	10	11
1929	13,405	12	33

In conformity with the functions of the Federal Board, these statistics make no clear distinction between individual and collective labour disputes, and a number of the more important individual disputes are no doubt included.

It may be said in conclusion that the work done by the various conciliation and arbitration boards in Mexico in securing the application of social legislation, and in particular of collective labour agreements, has been of great importance.

§ 2. — The System in Force

GENERAL INFORMATION

In course of time difficulties arose in the administration in the individual States of the social principles prescribed by the Constitution. The Federal Government therefore decided to introduce an amendment tending to make the Republic competent for social legislation, and revoke the independence which the States had previously enjoyed in this field. Such an amendment having been passed, the Government submitted the draft of a general Labour Code to the National Council ; on 18 August 1931¹, after considerable alteration, this became law, and takes the place of previous State social legislation on the subjects it covers.

The Code amends the conciliation and arbitration system, though the departures from previous Federal and State legislation are not great. The most striking new feature is the importance given to trade organisations, which are empowered to elect the employers' and workers' representatives on the conciliation and arbitration boards.

Parts VIII and IX deal very fully with the formation, composition and procedure of the labour authorities (*autoridades del trabajo*) whose duty it is to administer the provisions of the Code.

These authorities are as follows : Municipal conciliation boards (*juntas municipales de conciliación*), central conciliation and arbitration boards (*juntas centrales de conciliación y arbitraje*), Federal conciliation boards (*juntas federales de conciliación*) and the Federal Conciliation and Arbitration Board (*Junta Federal de Conciliación y Arbitraje*) ; the special minimum wage-fixing boards ; and the Labour Inspectorate. This study is concerned only with the various conciliation and arbitration boards, and

¹ *Legislative Series*, 1931, M-x. 1.

with the Labour Inspectorate in so far as it collaborates in the adjustment of disputes. The Code also permits employers and workers to provide in collective agreements for the organisation of joint boards with such economic and social duties as they may think fit to give them.

The official boards have a very wide scope, for not only are they competent to adjust collective labour disputes, but, despite their names, which give no such indication, they have other functions, in particular jurisdiction in individual labour disputes. Only their work with respect to collective disputes concerns us here.

COMPOSITION AND ELECTION OF THE BOARDS

All the four types of board are composed of an equal number (usually not more than one) of employers' and workers' representatives, and an impartial chairman appointed by the authorities ; in the case of the Federal conciliation boards the labour inspector acts in the last-named capacity.

The procedure for the election of representatives is very exactly prescribed. One of the most remarkable provisions is that both the trade unions whose members are employed under contract, and the organised workers who are unemployed for any reason but have been employed for at least six months during the previous year, are entitled to take part in the elections. Non-union workers may vote only in places where the workers are not organised. At the elections the delegates of the trade unions have a number of votes equal to that of the persons represented by them, and the delegates of the employers' associations a number of votes equal to that of the persons employed by them. The only other generally interesting provision on the subject is that which permits the Government to nominate representatives if the delegates of the persons qualified to elect them do not do so. This makes it certain that a board will in every case be formed, even against the will of the employers or workers or both.

The representatives hold office for two years. All adult Mexicans in possession of their civic rights and able to read and write may be candidates for election. The chairman of a board must in addition be able to prove special legal training or experience in industrial law.

The chairman and representatives receive remuneration out of public funds for the services they render. They have the status of officials and are subject to corresponding disciplinary regulations.

COMPETENCE AND PROCEDURE

The municipal and Federal conciliation boards may be either permanent or non-permanent. As their name implies, they have simply to mediate in collective labour disputes, the former in the districts for which they are competent, the latter in undertakings situated partly or wholly in the Federal zones (*zonas federales*), the great transport organisations and other undertakings with State concessions (mines ; importation, exportation, production and transmission of electricity and other power, etc.), and in disputes affecting more than one State, territory or district).

If mediation fails, disputes come before the central boards or the Federal Conciliation and Arbitration Board, which first of all make a further attempt at conciliation, and proceed to arbitrate if unsuccessful. The special provisions of the Code concerning economic disputes (*conflictos de orden económico*) govern procedure here. Such disputes are defined in section 570 as those " connected with the establishment of new conditions of employment, strikes or lock-outs, and which on account of their nature cannot be settled " by the ordinary procedure of the boards.

Immediately upon taking cognisance of a dispute of this kind, the board must take steps to ensure that matters remain in the state in which they were before the conflict arose and that resort be had neither to a strike nor to a lock-out, or that work be resumed, pending an enquiry into the causes of the dispute, the conditions in the industry affected, etc. After hearing the parties, the board orders an enquiry to be carried out by three experts who are assisted by two committees, one composed of workers and the other of employers, with equal numbers of members.

The experts have the utmost latitude to enquire into the dispute. They are entitled to carry out all the inspections permitted by the law, and to obtain the information which they need from all authorities, the parties and other persons, who are bound to answer the questions put to them.

In order to prevent delay, the board may fix a time limit for the holding of the enquiry, with due allowance for the seriousness of the dispute, provided that it does not exceed thirty days.

The experts must draw up a report and set forth the results obtained and their opinion concerning the manner in which the dispute may be settled and a repetition thereof prevented. The report and opinion must be laid before the parties for a period of

three days, in order that they may formulate their objections ; if any such objection is made, a date and hour must be fixed for the holding of a hearing to take evidence (*audiencia de pruebas*), in which the parties may adduce fresh considerations to nullify the conclusions of the experts. If necessary, the experts may be questioned in the presence of the parties. If the parties refrain from making any objections, or after the hearing mentioned has been held, the board issues the decision for the settlement of the dispute. Such a decision is explicitly given the same character and the same judicial effect as an award. It may make any change in the conditions of employment in accordance with the results obtained during the proceedings, for instance prescribe a reduction or increase of staff, regulate hours of work, wage-rates, etc.

EXECUTION OF AWARDS ; STRIKES AND LOCK-OUTS

The Code requires the chairmen of the boards to provide for the effective and immediate execution of awards, and to take all the measures necessary for the purpose. Execution is further safeguarded by a number of penal sanctions. If, for instance, an employer refuses to accept an award, the board may sentence him to pay the workers concerned three months' salary as compensation and any damages fixed by it ; further, contraventions of the Code in general, presumably including non-compliance or insufficient compliance with awards, are punishable with fines of 5 to 100 pesos (section 683). The provisions concerning strikes and lock-outs act as indirect safeguards for the proceedings and the execution of awards, and the most important of them may therefore be mentioned here, since they assign further important duties to the conciliation and arbitration boards.

Strikes are legal if their purpose is one of those specified in the Code as follows :

1. to obtain equilibrium between the different factors of production, bringing the rights of labour into harmony with those of capital ;
2. to obtain from an employer the conclusion of or compliance with a collective agreement ;
3. to exact the revision of a collective agreement if necessary upon the expiry of its period of operation, under the conditions and in the cases laid down in the Code ;
4. to support a strike which has for its object any of the purposes enumerated in the preceding items and which has not been declared illegal.

Even then, a strike is lawful only if a majority of the workers in the undertaking concerned declare in favour of it. Further, before declaring the strike the workers must forward an application in writing to the employer, fixing a time limit of not less than six days (ten days in the case of public services, e.g. waterworks, power stations, hospitals, etc.) for compliance, and send a copy of the application to the competent conciliation and arbitration board.

If the latter decides that the strike is unlawful (*ilicita*), which it may do if a majority of the strikers have committed acts of violence, or, in war time, if the employees belong to establishments or services under the Government, it must also declare that the contracts of employment, which, under the Code, are otherwise not affected by a strike, are terminated. The employer is then at liberty to conclude new contracts without prejudice to the penal and civil liabilities incurred by the strikers.

If a strike is declared in contravention of these provisions, the board must declare that a state of strike does not exist, and in consequence fix a short period within which work must be resumed, warn the strikers that their contracts of employment will be terminated if they fail to comply, and declare that the employer has incurred no liability and that he is free to conclude contracts with other workers and to bring an action for civil liability under the conditions laid down in Article 5 of the Federal Constitution against those persons who refuse to continue work. It must also take the necessary steps to protect the right to work. In other circumstances a strike is terminated by an award of the competent board if it has not been settled by agreement between the parties or by an award of the arbitrator freely chosen by the parties.

A lock-out is not lawful unless "over-production renders the suspension of work necessary to maintain prices within profitable limits", and is subject to the previous approval of the competent conciliation and arbitration board. It ceases when the board, after hearing the parties concerned, decides that the reasons for which it was declared no longer exist.

After resumption of work, the employer is bound to re-engage the workers previously employed by him.

Unlawful lock-outs entail civil and penal liability for the employers responsible.

§ 3. — Summary

The strength of the labour movement in Mexico is such that social legislation made considerable progress at a comparatively early date. In pursuance of the guiding principles for social policy laid down in the Federal Constitution of 1917, a number of the individual States enacted social legislation, covering among others the subject of conciliation and arbitration in collective labour disputes. The new Code makes the Republic competent in respect of social legislation, repeals the existing State laws on conciliation and arbitration, and establishes a uniform Federal system for the adjustment of collective labour disputes.

Various types of conciliation and arbitration boards are provided for, composed of equal numbers of employers and workers and an impartial chairman. If conciliation fails, they decide the dispute by award, and see that such award is executed; conformity is also safeguarded directly by civil and penal sanctions, and the proceedings and the execution of the awards have a further indirect guarantee in the narrowing down of the circumstances in which strikes and lock-outs may be lawfully declared. Mexico thus belongs to the group of States whose conciliation and arbitration systems are compulsory rather than voluntary.

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PANAMA

The Republic of Panama has an area of 32,380 square miles, with a population of some 500,000. Its products are mainly agricultural, notably tropical fruits. The chief form of mineral wealth is manganese, of which about 200,000 tons are extracted annually. There are no large industries in Panama. The statistics provide no particulars of the occupational distribution of the population. Most of the existing workers' organisations are mutual aid associations and are affiliated to one main federation, the Panama Confederation of Labour (*Federación obrera de Panama*)¹.

The social legislation of Panama does not comprise any measure specially relating to the settlement of labour disputes.

The Administrative Act of 22 August 1926 contains a chapter dealing with the settlement of strikes (sections 1067 to 1073), under which the right to strike is recognised although very narrowly restricted. If the authorities consider that a strike constitutes an abuse of this right, the police are authorised to order the strikers to return to work, failure to comply constituting an offence against public order.

The same Act lays down special procedure for the settlement of labour disputes. On the outbreak of a dispute the entrepreneur, owner or manager, must notify the authorities of the stoppage of work. The mayor or governor must then enter into negotiations with the parties with a view to bringing about an agreement. If the parties accept the mediation of the authorities, the latter must appoint two persons suitable to act as an arbitration board for the settlement of the case. The board must invite the representatives of the parties to appear before it, hear their case, and soon afterwards give its decision.

The arbitration board must draw up a report, which must be signed by the employers, workers, and members of the board. As soon as the parties are notified of the decision, they may lodge an appeal against it with the authorities of next instance. The decision of the arbitration board is enforceable if it has been accepted by the parties.

No information is available regarding the results of the working of this conciliation and arbitration system.

¹ Cf. *Freedom of Association*, Vol. V, p. 247.

PERU

Under the Orders of 6 and 27 March 1920, 9 April 1920, 14 September 1920 and 18 June 1921, the duty of settling collective labour disputes is assigned to the Labour Service of the Ministry of Public Works. These provisions are described in the study of *Freedom of Association* published by the International Labour Office¹, to which, in the absence of any subsequent amendments to the law, the reader may be referred.

¹ *Freedom of Association*, Vol. V, pp. 223 et seq.

URUGUAY

Uruguay has an area of about 187,000 square kilometres, and its population according to the census of 31 December 1928 was rather more than 1,800,000. It is largely an agricultural State, and its principal industries are closely connected with the land. There are various gold, manganese, talc, copper, lead and other metal mines, and marble and granite quarries, but the most important industry is the production of frozen meat. There are also textile works, grain mills, glass, cement, and shoe factories, and chemical works.

At first the labour movement in Uruguay was confined to the creation of mutual aid societies, but recently there has been a rapid development in the direction of real trade unions, and there are now a certain number of central workers' organisations. One of these is the Regional Federation of Labour of Uruguay (*Federación Obrera Regional del Uruguay*), the membership of which has declined lately, and another, the Trade Union Federation of Uruguay (*Unión Sindical Uruguaya*), both of an anarchist tendency. Twelve unions are affiliated to the latter. Most important of all is the Industrial Trade Unions (*Sindicatos de Industrias*), an organisation of moderate views.

A Labour Committee for International Relations (*Comité Obrero de Relaciones Internacionales*) was founded in 1926 with the object of co-operating with workers' organisations in other countries and in particular with the International Labour Organisation. The following trade unions are represented on this Committee: the Marine Engineers' Union, the Printers' Union, and the above-mentioned Industrial Trade Unions. There are a large number of unions not affiliated to any central body, e.g. those of the chauffeurs, bakers, café and hotel employees, etc. But in October 1930 efforts to form one central confederation led to the foundation of the General Federation of Workers of Uruguay (*Unión General de Trabajadores del Uruguay*)¹. Statistics of occupational distribution, which would permit an estimate of

¹ Cf. *Freedom of Association*, Vol. V, pp. 230 et seq.

the numbers of persons employed in the various agricultural and industrial undertakings, are not available.

STATISTICAL DATA AND PROPOSED LEGISLATION

Uruguayan social legislation does not as yet cover conciliation and arbitration in collective labour disputes, the only provision on the subject being contained in the Decree of the National Labour Office of 10 October 1919, instructing the factory inspectors to intervene in case of dispute between employers and workers ¹.

In November 1927 the Uruguayan National Council submitted to Parliament the draft of a Labour Code which included a complete system for the settlement of collective labour disputes.

Three stages of adjustment were here provided for. A works' council (*consejo de taller*), composed of representatives of the employers and workers and numbering from two to eight persons according to the size of the staff, would be set up in every industrial undertaking employing more than fifty workers. The workers' representatives would be elected by secret ballot at a special meeting of the staff. If there was a collective agreement, the trade unions party to it would be entitled to nominate the workers' representatives. Persons not belonging to the undertaking would be excluded.

If the attempts at conciliation within the works' council failed, the case would be brought before a conciliation committee, composed of a representative of the council as chairman and one employers' and one workers' representative, to be set up by the Superior Labour Council within 24 hours of application by the parties. The procedure for the nomination of the employers' and workers' representative was laid down in detail. Collective agreements might stipulate the establishment of permanent conciliation committees.

To avoid delay, it was provided that the decisions of these committees must be given within a short period, usually three days. If the attempt at conciliation failed, the committee's

¹ The strike figures are not complete, and only the following could be obtained from official sources.

Number of strikes		Number of strikes	
1920	193	1924	16
1921	146	1925	11
1922	35	1926	5
1923	114	1927	13

(*Crónica de la Oficina Nacional del Trabajo*, Montevideo, October 1925 ; *Informaciones Sociales*, Madrid, January 1929.)

duties would be at an end. During the proceedings strikes and lock-outs would be prohibited. A report of the committee's proceedings was to be published in the official gazette.

A third stage was provided in that the parties would be obliged to submit to arbitration, if this was stipulated in the collective agreement, or in the case of a dispute in a State or public undertaking. Failing this, arbitration proceedings might be opened if one of the parties made application to that effect to the Superior Labour Council. This body would then set up an arbitration committee according to the same procedure as that provided for setting up a conciliation committee; the award must then usually be given within a fortnight. An arbitration award would be binding if the collective agreement provided for arbitration, or if the arbitration proceedings were opened on application by both parties, or in the case of a dispute in a State undertaking. Penalties were prescribed for non-observance of awards; and in particular it was provided that employers might not engage workers on less favourable conditions than those laid down in the award, and that workers might not engage in propaganda for a strike in opposition to the terms of the award. Awards were to be valid for the space of one year. Appeal to the Superior Labour Council for annulment would be permitted in certain circumstances.

It remains to be seen whether, and in what form, these plans will be realised.

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VENEZUELA

The United States of Venezuela have an area of more than one million square kilometres and nearly 3,200,000 inhabitants. The principal wealth of the country lies in agriculture and its petroleum wells. Industrial development has been very rapid during recent years, but no occupational statistics are available. The labour movement has made great strides since the war, and there is now a central organisation, the Venezuela Federation of Labour (*Federación obrera de Venezuela*), to which 34 unions with a total membership of 26,000 were affiliated in 1928¹.

Venezuela has no elaborate procedure for the adjustment of industrial disputes, but the Labour Act of 23 July 1928² provides for the possibility of such procedure, section 41 stating that the Presidents of the States and Governors of the Federal District and Federal Territories shall act as arbitrators to decide questions of hours of work, occupational risks, wage-fixing, etc., provided that such questions are submitted to them voluntarily by employers, workers or salaried employees and that the questions involved have caused or are likely to cause a strike or lock-out in one or more industries.

Either party may appeal to the Minister of the Interior against the decisions of these arbitrators, and his decision is final.

If the parties fail to agree to submit the question to arbitration, they may refer the matter to the law courts.

Details of procedure are not prescribed, and in particular there is no provision that representatives of the employers and workers shall act as members of the arbitration courts.

No information is available concerning the working and results of the system.

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¹ Cf. *Freedom of Association*, pp. 240 et seq.

² *Legislative Series*, 1928, Ven. 2.

UNION OF SOUTH AFRICA

§ 1. — Economic Background and Development

The Union of South Africa comprises an area of 471,917 square miles with a population which, in 1927, amounted to 1,709,000 Europeans and 5,950,000 non-Europeans. Since 1922 immigration and emigration have been practically in equilibrium, the slight net influx of Europeans being balanced by a slight net efflux of non-Europeans.

Over half a million of the European population of the Union were classified in 1921 as "gainfully employed". Of these 168,000 were engaged in agriculture, 20,000 in mining, over 32,000 in transport, over 100,000 in industry and over 100,000 in commerce. The number of Natives employed in proclaimed Labour Districts (i.e. districts where large numbers of Natives are employed) amounted to 331,734 on 31 December 1927, of whom 247,667 were employed in mines and works.

Both employers and workers are organised to a certain extent. The membership of trade unions in 1927 was put at 213,620. Of these 58,356 belonged to registered unions and 155,264 to unregistered unions. The great majority of the membership of the non-registered trade unions is accounted for by the Industrial and Commercial Workers' Union, made up exclusively of non-Europeans. The central trade union body is the South African Trades Union Congress, founded early in 1925 under the title of the South African Association of Employees' Organisations.

All questions concerning labour in the Union are affected and in almost every instance greatly complicated by the existence of the numerically predominant Native and coloured elements of the population. As the result of the presence of this large section of workers, the position of the European worker has been limited to a considerable degree to the more highly remunerated lines of the skilled trades or to the work of supervision of non-European labourers ¹.

¹ Cf. *Freedom of Association*, Vol. V, pp. 261 et seq.

Previous to the adoption of the Industrial Conciliation Act of 1924, the chief Act in force in South Africa was the Transvaal Industrial Disputes Prevention Act of 1909¹. A number of joint boards of reference were from time to time established in various industries under this Act, but its effect upon industrial relations was never of very great importance.

The wages board system, introduced in 1918 and made applicable to women and young persons, facilitated to some extent the adjustment of economic grievances by the method of discussion and negotiation. In the following year a conference of employers and employees was held at the suggestion of the Government, and the creation in 1920 of a National Industrial Council in the printing and newspaper industry marked an important step in the history of co-operation and consultation between employers and workers.

After the grave industrial upheaval which occurred in the Witwatersrand in 1922, a board representative of employers and workers was appointed by the Government to investigate the circumstances of the mining industry, which resulted, among other things, in the establishment of conciliation machinery for the European employees of the gold and coal mines. The machinery set up in this industry comprised standing conciliation boards consisting of an equal number of representatives of employers and employees, and having a clearly defined code of procedure.

The adoption of the Industrial Conciliation Act, 1924² instituted for the first time a complete system of conciliation and arbitration for the whole of the Union. This Act was amended in 1930³, but its main features remain unchanged.

§ 2. — The System in Force

The Industrial Conciliation Act, 1924, applies to every industrial and public utility undertaking, to every industry, trade and occupation and to every employer and employee engaged in or at any such undertaking, industry, trade or occupation. It does not extend to agricultural or farming employment or, with certain exceptions, to government employment.

¹ *Bulletin of the International Labour Office*, Basle, 1911, Vol. VI, p. 50.

² *Legislative Series*, 1924, S. A. 1.

³ *Ibid.*, 1930, S. A. 5.

CONCILIATION MACHINERY

The Act makes provision (sections 2 and 3) for the constitution and registration of standing industrial councils for any industry, trade or occupation for a particular area by agreement between any employer or employers' organisation and a registered trade union or group of registered trade unions. The rules of a registered industrial council must, among other things, provide for the appointment of an equal number of representatives of employers and employees, the appointment of necessary officers and the drawing up of the method of procedure for dealing with disputes coming under the consideration of the council. The Minister of Mines and Industries or any other Minister to whom the Governor-General may assign the administration of the Act must satisfy himself that the constitution and rules of any such council are satisfactory, that all conditions prescribed by the Industrial Conciliation Act have been complied with and that the industrial council is sufficiently representative within any area of the particular undertaking, industry, trade or occupation, before it can be registered.

Where no industrial council exists, any trade union or employers' organisation or any number of employees or employers considered by the Minister of Mines and Industries to be sufficiently representative may apply to the Minister for the appointment of a conciliation board for the consideration and determination of any dispute at issue ; provided, however, that no conciliation board shall be appointed if the dispute is in respect of an individual employee, unless in the opinion of the Minister a matter of principle is involved. A conciliation board consists of such number of persons as may be agreed upon by the parties concerned, or, failing such agreement, as the Minister may determine, half of whom are employers nominated by employers' organisations or the employers concerned and half employees nominated by the trade union or employees concerned. Where in the opinion of the Minister there is no organisation or trade union sufficiently representative of the employers or the employees, he may, if he deem fit, cause the members of the conciliation board to be nominated directly by the employers or employees themselves, or partly by any organisation or trade union and partly by the employers or employees. Where such method of nomination is not adopted, the Minister may himself directly appoint the members of the conciliation board.

Where both parties to any dispute under consideration by an industrial council or conciliation board apply to the Minister

for the appointment of a mediator, or where the Minister thinks that settlement of the dispute would be assisted thereby, the Minister may appoint a mediator.

COMPULSORY PROVISIONS

Under section 12 it is declared unlawful for any employer, employers' organisation, trade union or other person to declare any strike or lock-out until : (a) where there is an industrial council, the matter giving occasion therefor shall have been submitted to, considered and reported on by such industrial council ; (b) where there is no industrial council and the matter giving occasion therefor is one upon which a conciliation board may be appointed, it shall have been submitted to, considered and reported on by a conciliation board.

Under section 10 also it is unlawful in any undertaking, industry, trade or occupation : (a) for any employer to make any alteration in the terms of employment of any employee, or (b) for any employee to make any alteration in the terms of his employment, unless one calendar month's notice of such alteration or such demand has been given. If within fourteen days of the receipt by an employer or employee of any such notice the person receiving it refers the subject matter of the notice to an industrial council or applies for the appointment of a conciliation board, which application is granted, the alteration of terms of employment of which notice was given cannot have effect until the matter has been determined or has been reported on by the industrial council or conciliation board, as the case may be.

The Minister may declare on application by the parties to an industrial council or conciliation board that any agreement arrived at shall be binding upon the parties thereto and upon the employers and employees represented on the council or board ; or may, if he is satisfied that the applicants are sufficiently representative of the undertaking, industry, trade or occupation concerned, declare that the agreement shall be binding upon all employers and employees in that undertaking, trade or occupation in the area over which the council or board has jurisdiction.

ARBITRATION

The Industrial Conciliation Act also makes provision for arbitration in certain cases. If a majority of the representatives of the two sides of an industrial council or a conciliation board

agree to go to arbitration, the terms of the arbitration award are binding on all parties represented on the industrial council or conciliation board which has agreed to arbitrate, and any person bound thereby who fails to accept or carry out such award is guilty of an offence. It is moreover unlawful for any employer, employers' organisation, trade union or other person to declare any strike or lock-out in respect of any dispute thus referred to arbitration, or during the period of operation of any award thus made. The Minister may at the request of the parties extend the application of any award of an arbitrator or umpire in the same way as agreements arrived at by an industrial council or conciliation board are extended.

PUBLIC UTILITY SERVICES

Where a dispute is between a local authority and its employees upon work connected with the supply of light, power, water, sanitary, transportation, or fire-extinguishing services, recourse to arbitration is compulsory in the event of failure to agree (section 11); and any award made is final and binding upon the parties to the dispute. Under section 21 provision is made by which the Minister of Mines and Industries may take over and operate any service performed by a local authority which is unable or unwilling to continue to perform such services by reason of a stoppage of work or allied reason.

PENALTIES

Penalties are provided in the event of failure to observe the various regulations laid down by the Act. Any person who makes default in complying with the declaration of the application of the common rule in any particular area is liable on conviction to a fine not exceeding £20 and to a further fine not exceeding £5 for every day on which the default continues after conviction. Any person who is guilty of an offence under the Act for which no penalty is expressly prescribed is liable to a fine not exceeding £500 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

In 1930 an amending Act was adopted, dealing with certain defects and anomalies, but not changing in any vital respect the main features outlined above.

§ 3. — Results and Opinions

The following table shows the number of strikes and lock-outs in South Africa since 1906, together with the number of workpeople involved and the aggregate duration in working days :

Year	Number of strikes beginning each year	Number of workpeople involved	Aggregate duration in working days
1906	1	49	2,646
1907	1	6,400	288,000
1908	—	—	—
1909	—	—	—
1910	5	421	10,200
1911	4	860	16,785
1912	1	884	—
1913	5	19,771	89,887
1914	12	21,927	160,129
1915	2	—	—
1916	10	1,275	1,420
1917	22	3,457	18,417
1918	23	2,582	31,786
1919	47	23,799	537,138
1920	66	105,658	839,415
1921	25	9,892	112,357
1922	12	29,001	1,339,508
1923	2	50	740
1924	7	1,856	10,129
1925	—	—	—
1926	3	762	890
1927	12	5,158	9,126
1928	10	5,746	1,168
1929	10	2,962	1,030
1930	12	5,050	1,607 ¹

¹ Not including the general strike of Natives in East London.

As will be noticed, the number of stoppages of work since the adoption of the Act in 1924 is relatively negligible.

In June 1928 there were approximately 2,600 employers and 43,000 employees covered by the Industrial Conciliation Act. Speaking in the House of Assembly on 13 February 1930 the Minister of Labour stated that there were in existence four industrial councils of national scope, thirty more local in scope, and twenty-two industrial agreements. It has been observed that the result of the Industrial Conciliation Act has been to speed up organisation both on the part of employers and of workers.

During the twelve-month period July 1927 to June 1928 five conciliation boards were set up under the Industrial Conciliation Act. In all thirty-one such boards have been set up since the

adoption of the Act. On 30 June 1928 four awards by arbitrators appointed under the Industrial Conciliation Act were in operation.

The views expressed by speakers in the debate (March 1930) on the Act amending the Industrial Conciliation Act, 1924, bore witness, for the most part, to the good opinion in which the measure is held. The Minister of Labour referred to it as having been of tremendous benefit to the industrial peace and progress of South Africa; a Labour member spoke of it as one of the most useful pieces of machinery known for the settlement and prevention of disputes; and yet another as the "finest piece of industrial legislation enacted since Union". Members of the (Opposition) South African Party, while criticising the amendments proposed, did not advance any very concrete and definite objections against the main Act.

§ 4. — Summary

The system of conciliation and arbitration set up by the Industrial Conciliation Act, 1924, makes provision for standing industrial councils and for *ad hoc* conciliation boards. It forbids any stoppage of work until the machinery thus provided has been put into operation; and it forbids any change in the conditions of employment until the matter has been dealt with by the council or board as the case may be, in the event of the parties so wishing. It also permits the extension of the common rule at the discretion of the Minister.

The provisions for arbitration include notably that recourse to arbitration may be had at the wish of a majority of an industrial council or conciliation board, that no stoppage of work may occur while arbitration proceedings are taking place, and that no strike or lock-out may be declared during the period of an arbitration award. Finally, in public utility services arbitration is compulsory, and the Minister of Mines and Industries has the right to take over such services should occasion require.

On the whole the operation of the Act would appear to have been successful and the opinion expressed of it is predominantly favourable.

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AUSTRALIA

§ 1. — Economic Background and Development

The Commonwealth of Australia has an area of approximately three million square miles. The estimated population on 31 December 1929 was over six and one-half millions. It consists of six States — New South Wales (with a population of nearly two and a half millions), Victoria (over one and three-quarter millions), Queensland (nearly one million), South Australia (over half a million), Western Australia (417,000), and Tasmania (219,000) — together with two territories, Northern Territory (4,000) and the Federal capital (8,000).

Australia is predominantly an agricultural and pastoral country, but its industrial activity is considerable. In 1928-1929 some 450,000 persons were employed in factories — largely clothing and textiles (109,000) and metal works and machinery (98,000) — and 48,000 in mining, chiefly coal (28,000). Employees on Federal and State railways in 1929 numbered 93,000 (wages staff) and 17,000 (salaried staff). There is also an important shipping industry. The census of 1921 showed that 8.7 per cent. of the total breadwinners were engaged in professional occupations, 9.1 per cent. in domestic, 15.3 per cent. in commercial, 9.0 per cent. in transport and communication, and 31.2 per cent. in industrial occupations, while 25.8 per cent. were primary producers and 0.9 per cent. independent.

Trade unionism is highly developed in Australia, the membership in 1929 exceeding 900,000. It is estimated that the proportion of trade unionists amounts to 59.4 per cent. of the 1,302,000 male employees twenty years of age and over, and 41.3 per cent. of the 308,000 female employees twenty years and over. Employers' associations in 1929 numbered 527 with 1,957 branches and a total membership of 135,342¹.

The conciliation and arbitration of industrial disputes has played a highly important part in Australia and is a question of first importance both in industrial and in political circles. Along-

¹ Cf. *Freedom of Association*, Vol. V, pp. 274 et seq.

side the Federal system there are separate systems in each of the six States. The machinery set up in each case is exceedingly complex, is of long standing and is continually being modified. To give anything like a complete history of the evolution of these systems and a detailed description of the machinery actually in operation is impossible in the space available. What is done here is to give first of all a cursory description of the beginnings of conciliation and arbitration in this country and then to take each of the seven systems separately, furnishing a brief account of the main features of its development and present form.

As early as 1884 a Royal Commission in Victoria, appointed to consider the "sweating" evil, reported that "the most effective mode of bringing about industrial co-operation and mutual sympathy between employers and employed, and thus obviating labour conflicts in the future, is by the establishment of Courts of Conciliation, whose procedure and awards shall have the sanction and authority of law". This recommendation, however, bore no immediate fruit. In 1890 Sir Samuel Griffith, some-time Premier of Queensland, introduced his famous Bill laying down "the natural law relating to the acquisition of property", among the clauses of which were the following: "The natural and proper measure of wages is such a sum as is a fair immediate recompense for the labour for which they are paid, having regard to its character and duration; but it can never be taken at a less sum than such as is sufficient to maintain the labourer and his family in a state of health and reasonable comfort."

"It is the duty of the State to make provision by positive law for securing the private distribution of the net products of labour in accordance with the principles hereby declared."

Apart from a few individuals, however, the public, previous to 1890, was hostile to State intervention in industrial disputes, and the attitude of the Australian Parliaments was one of non-interference and sometimes almost of apathy. The great change in public opinion in Australia dates from the maritime strike of 1890. This dispute was fought over the issue of the employers' right to employ union or non-union labour as they thought fit, and ended in an overwhelming victory for the employers. The general impression it left on the public mind was disapproval of the employers' action in refusing to meet the men in conference, and a general feeling that such disputes should be in some way prevented.

In 1890 Mr. Charles Cameron Kingston introduced an Industrial

Disputes Settlement Bill into the South Australian Parliament, which, although it did not become law, formed the basis of all subsequent legislation on compulsory arbitration. A New South Wales Commission on strikes and arbitration, which sat in 1891, further helped to pave the way for the coming reform. In 1894 an Industrial Conciliation and Arbitration Act based on Kingston's Bill became law in New Zealand and the considerable measure of success it attained helped greatly to recommend the adoption of similar measures in Australia. The attitude of the trade unions towards such a step was particularly favourable. A Conciliation Act passed in 1894 in New South Wales, which proved a failure, further helped to encourage the idea of compulsory arbitration. By May 1896 compulsory industrial arbitration had become a part of the platform of the Victoria United Labour and Liberal Party, and soon was adopted by the whole Labour Party. In 1900 West Australia and New South Wales took the lead in setting up machinery for the compulsory arbitration of industrial disputes.

At the same time as the movement towards compulsory arbitration was advancing, the idea of the creation of machinery for the State regulation of wages was also gaining ground. In 1893 a preliminary board was appointed in Victoria to enquire into sweating and the reports presented in 1894 and 1895 were succeeded by the Factories and Shops Act of 1896, which authorised the appointment of wages boards for certain manufacturing industries. The Victorian example had an important influence in other States, in particular South Australia, where similar boards were established under the Act of 1900. In New South Wales and Queensland wages boards were set up in 1908, as also in Tasmania in 1910.

The subsequent history of the evolution of compulsory arbitration and State regulation of wages can best be traced in each State separately.

§ 2. — The Systems in Force

1. THE FEDERAL SYSTEM

Development

The Australian Federal Constitution of 1900 gave to the Federal Parliament power to make laws with respect to "conciliation and arbitration for the prevention and settlement of

industrial disputes extending beyond the limits of any one State". In pursuance of this power an Act was passed in 1904 constituting a Court of Conciliation and Arbitration for the prevention and settlement of industrial disputes. This Act as amended in 1909, 1910, 1911, 1914 (twice), 1915, 1918, 1920, 1921, 1926, 1927, 1928¹ and 1930², is still in force³.

Two subsidiary lines of legislation affecting conciliation and arbitration on a Commonwealth basis also require mention. The Arbitration (Public Service) Acts of 1911, 1920, 1922 and 1924 resulted in the setting-up of a special system to deal with matters arising out of the employment of Federal servants, while the Industrial Peace Act of 1920 made provision for a Commonwealth Council of industrial representatives and special tribunals for the prevention or settlement of disputes. These two measures do not call for further description here.

The System in Force

The chief objects of the Commonwealth Conciliation and Arbitration Act, as laid down in its first section are :

I. To promote goodwill in industry by conciliation and arbitration⁴.

II. To constitute a Commonwealth Court of Conciliation and Arbitration having jurisdiction for the prevention and settlement of industrial disputes.

III. To provide for the exercise of the jurisdiction of the Court by conciliation with a view to amicable agreement between the parties.

IV. In default of amicable agreement between the parties to provide for the exercise of the jurisdiction of the Court by equitable award.

V. To enable States to refer industrial disputes to the Court, and to permit the working of the Court and of State industrial authorities in aid of each other.

VI. To facilitate and encourage the organisation of representative bodies of employers and employees and the submission of industrial disputes to the Court by organisations, and to permit representative bodies of employers and of employees to be declared organisations for the purposes of this Act.

VII. To provide for the making and enforcement of industrial agreements between employers and employees in relation to industrial disputes.

¹ *Legislative Series*, 1928, Austral. 2.

² *Ibid.*, 1930, Austral. 11.

³ For a description of the earlier years of the Commonwealth Court, cf. HIGGINS : *A New Province for Law and Order*.

⁴ It is significant that previous to the 1930 amendment this clause ran : "to prevent lock-outs and strikes in relation to industrial disputes".

Three main organs are provided for by the Act, viz. a Court of Conciliation and Arbitration, commissioners and conciliation committees.

The Commonwealth Court, constituted by the Act, consists of a Chief Judge and such other judges as are appointed by the Governor-General in Council. They cannot be removed from their office except by the Governor-General in Council on an address from both Houses of Parliament on the ground of proved misbehaviour or incapacity. The function of a judge is to endeavour "at all times by all lawful ways and means to reconcile the parties to industrial disputes, and to prevent and settle industrial disputes, whether or not the Court has cognisance of them, in all cases in which it appears to him that his mediation is desirable in the public interest". The decision of the Court, when composed of more than one judge, is by a majority vote. In the event of the members being equally divided the matter is settled according to the opinion of the Chief Judge. The Court may delegate such of its powers as it may deem fit to a local industrial board (i.e. any State industrial authority willing to act, or any local board constituted as prescribed by the Court, consisting of equal numbers of representatives of employers and employees and a chairman appointed by the Court) for investigation and report. The Judges in the exercise of their functions may also have recourse to compulsory conference with the parties whenever this is considered necessary.

The Court of Conciliation and Arbitration takes cognisance, for purposes of prevention and settlement, of the following industrial disputes :

- (a) all industrial disputes which are certified to the Court by the Registrar as proper to be dealt with by it in the public interest ;
- (b) all industrial disputes which are submitted to the Court by an organisation, or by an association registered for the time being as an organisation, by plaint ;
- (c) all industrial disputes with which any State industrial authority, or the Governor in Council of a State in which there is no State industrial authority, requests the Court to deal ; and
- (d) all industrial disputes as to which a judge or conciliation Commissioner has summoned a conference of parties and as to which no agreement has been reached and which the judge or conciliation Commissioner has thereupon referred to the Court.

The Court can fix maximum penalties for breach of an award not exceeding £100. The penalty previous to the 1930 amendment was £1,000, and it is still laid down (in section 78) that the breach of an agreement, as distinct from an award, is liable to a penalty not exceeding £500.

The Act constituting the Court originally purported to confer on the Court power to declare that an award made by it in settlement of an inter-State industrial dispute between parties should apply as a "common rule" throughout the industry in respect of which the dispute existed. The High Court of Australia, however, in 1911 (*Australian Boot Trade Employees' Federation v. Whybrow and others*, 11 CLR., p. 311) declared this purported grant of power to be *ultra vires* the Parliament. Consequently an award of the Court binds only employers and employees who individually, or by representation through organisations, are before the Court as parties to the dispute and members of organisations who become such after the date of the award. The Court has power to direct that "as between members of organisations, of employers, or employees and other persons . . . offering or desiring service or employment at the same time, preference shall, in such manner as is specified in the award or order, be given to such members, other things being equal". The Court may likewise prescribe a minimum rate of wages or remuneration.

The conciliation commissioners provided for by the Act are not to exceed three in number, being appointed for a period of five years and eligible for re-appointment. The conciliation commissioner has in most respects similar powers to a judge, but is debarred from imposing penalties or interpreting awards, that is to say, the functions of a commissioner do not extend to matters the determination of which would involve an exercise of the judicial, as distinct from the arbitral, power.

Conciliation committees may be appointed by the Governor-General for particular industries or parts of industry on the application of any party to an industrial dispute. Section 33 of the Act, as amended, laid down that "an industrial dispute . . . shall not be dealt with by the Court or a judge thereof . . . in any case in which a conciliation committee has been appointed", but this section has since been declared void by the High Court.

Conciliation committees consist of members, half of whom are representative of employers and half representative of organisations of employees, with a conciliation commissioner as chairman. In dealing with an industrial dispute the chairman of a conciliation

committee is not present at and does not take part in the deliberations unless it appears unlikely that agreement will be reached. If no agreement is reached by a conciliation committee and the views of the chairman do not coincide with the views of either party, the chairman may issue a summons directed to such persons or organisations as he thinks proper, calling upon them to show cause why an award should not be made in accordance with the terms which in his view should be agreed to. Upon the return of any such summons the conciliation commissioner may make such award as he thinks proper for the prevention or settlement of the dispute in question.

Particular interest attaches to the clause governing the relation between the Federal system and the State systems of conciliation and arbitration. Section 20 lays down that if it appears that any State industrial authority is dealing with a matter which is provided for in an award of the Court or of a conciliation commissioner, or is the subject of proceedings before the Court or a conciliation commissioner, an order may be made restraining the State industrial authority from dealing with the matter in question and any award or determination of a State industrial authority made in contravention of such an order is void. Section 30 makes the further provision that when a State law or an award or determination of a State industrial authority is inconsistent with or deals with any matter forming the subject of an award or order made by the Federal Court or conciliation commissioner the Federal award shall prevail.

Among other matters, lengthy provision is made in the Act for inspection, for the registration of organisations and for the holding of a secret ballot of members of a registered organisation in relation to a dispute before it.

NEW SOUTH WALES

Development

Acts were passed in New South Wales in 1892 and in 1899, with the object of providing means for the settlement of industrial disputes, but they proved ineffective, chiefly, it was thought, because the parties to a dispute were not compelled to submit their cases to arbitration, nor, after, submission, to abide by the award.

The principle of voluntary arbitration was abandoned in 1901, when the Industrial Arbitration Act was passed. By this Act a

Court of Arbitration was set up, to which the submission of trade disputes was compulsory. In 1908 this Act expired, and was replaced by the Industrial Disputes Act, which provided for the constitution of wages boards as subsidiary tribunals to determine the conditions in specified industries, their awards being subject to revision by the Court. The Act of 1908 was replaced in 1912 by the Industrial Arbitration Act, which is the basis of the existing State legislation. In this Act an attempt was made to remedy the more serious defects which had appeared in the earlier legislation, particularly delay in the hearing and determination of claims, and the overlapping of awards. In 1916 the Act was amended, the functions of the wages or industrial boards being transferred to the Court. In 1918 a further amendment provided for the appointment of special courts to deal with cases affecting the Crown as employer and those relating to the coal-mining industry, and of deputy courts to exercise jurisdiction in proclaimed districts. By the same Act a Board of Trade was established as part of a scheme for encouraging a mutual co-operation between employers and employees in the adjustment of industrial matters. An amending Act passed in 1919 related mainly to the extension of the arbitration system to the employees in the public service of the State. A further amending Act of 1920 made provision for the declaration of a living wage by the Board of Trade. In 1922 yet another amending Act was passed, making minor changes only. Further amendments in 1926¹, 1927², 1929³ and 1930⁴ are taken into account in the ensuing description of the system as it now stands.

The System in Force

The principal organs of the New South Wales system are the Industrial Commission and the conciliation committees constituted for various industries.

The Industrial Arbitration (Amendment) Act, 1926, provided for the establishment of an Industrial Commission to take the place of the Court of Industrial Arbitration. The Commission consisted of an even number of members, one-half representative of employees and one-half representative of employers, with the Industrial Commissioner as president. The amending Act of 1927 altered its constitution to three members each having the

¹ *Legislative Series*, 1926, Austral. 7.

² *Ibid.*, 1927, Austral. 7.

³ *Ibid.*, 1929, Austral. 5 A and 5 B.

⁴ *Ibid.*, 1930, Austral. 12.

status of a puisne judge of the Supreme Court. The Commission is authorised to determine any industrial matter referred to it by the Minister responsible for administering the Act, to decide the amount of the living wage, to confer with persons and unions on any question affecting the settlement of industrial matters and to summon conferences. Provision is made for a Deputy Commissioner, who exercises the power of the Commission in matters referred to him. Determinations by the Deputy Commissioner may be carried, on appeal, to the Industrial Commission.

Under the 1926 Amending Act a conciliation committee consisting of an equal number of representatives of employers and employees, together with a chairman, may be appointed for any industry or calling for which an industrial board has been constituted¹. For this purpose the Minister draws up a panel of chairmen of conciliation committees, one of which is allotted by the Industrial Commission to each committee appointed. Since the number of chairmen is limited, the committees of allied industries may be grouped under the same chairman.

A conciliation committee may enquire into any industrial matter in the industry for which it is established, and may by a majority vote make an order or award binding on any or all employers and employees in the industry. An amending Act of 1927 deprived the chairman of the power to vote except when the other members are equally divided on a question and agree to accept his decision. Appeal from the conciliation committee may be made to the Industrial Commission except in the case where the parties have agreed to accept the decision of the conciliation committee. If the committee fails to settle the question at issue, the matter then goes before the Industrial Commission.

The conciliation committees may make awards fixing minimum rates of wages and salaries, minimum prices for piecework, overtime rates, the number of apprentices and hours and times to be worked to entitle employees to the wages fixed. An award or an agreement may not be made for a wage lower than the living wage declared by the Industrial Commission.

Awards may also prescribe that preference of employment shall be given to unionists. The Industrial Arbitration (Amendment) Act of 1926 authorised tribunals to award "absolute

¹ An industrial board is set up by the Minister on the recommendation of the Industrial Commission. By the amending Act of 1926 industrial boards were deprived of any function except that the appointment of such a Board is a condition precedent to taking action so far as the industry in question is concerned.

preference", and many awards contained provisions which practically precluded non-unionists from engagement, or made it a condition that when such persons were engaged they must apply for admission to an appropriate union. The amending Act of 1927 limited the authority of the tribunals in this respect, the position now being that preference may be prescribed to the extent that where union and non-union applicants for posts present themselves the union applicants are to be preferred, other things being equal; but no power exists to prescribe that an employee shall join a union as a condition of securing or retaining employment. At the time of writing further amendments establishing absolute preference are under consideration.

For the purpose of bringing an industry under the review of the State industrial tribunals the employees must be organised as a trade union under the Trade Union Act of 1881, and must obtain registration as an industrial union under the Industrial Arbitration Act. Registration for the purpose has been effected by practically all classes of employees throughout the States, the principal exceptions being in the rural industries. An attempt was made to extend organisation among rural workers and to make them subject to awards, but by the 1929 amendment, rural workers were excluded from the provisions of the Act. Industrial unions and trade unions are empowered to make with employers written agreements which become binding between the parties when filed in the prescribed manner.

Part VI of the Industrial Arbitration Act, 1912 (amended), lays down precisely what strikes are to be considered as illegal, namely, any strike by employees of the Crown or of the Government of the State, by employees of any city, shire or municipal council, or employees engaged in contracts for military or naval purposes; any strike by the employees in an industry the conditions of which are for the time being wholly or partially regulated by an award or industrial agreement, provided always that an award which has been in operation for a period of at least twelve months may be made no longer binding by the vote of a majority of its members at a secret ballot in which not less than two-thirds of the members of the union take part; and any strike commenced prior to the expiry of fourteen clear days' notice in writing of intention to discontinue work. In the event of an illegal strike occurring in any industry, the Court may order any trade union implicated to pay a penalty not exceeding £500. Persons aiding or instigating an illegal strike or otherwise tending to encourage

it are liable to penalties varying between £10 and £100 and imprisonment varying from one to six months. Breaches of an award or an industrial agreement are liable to a penalty not exceeding £50. Provision is made to prevent the dismissal of an employee by reason of his activity in an industrial matter.

VICTORIA

Development

In 1884 the Royal Commission in Victoria appointed to consider the "sweating" evil, reported that "the most effective mode of bringing about industrial co-operation and mutual sympathy between employers and employed, and thus obviating labour conflicts in the future, is by the establishment of courts of conciliation whose procedure and awards shall have the sanction and authority of law". This recommendation for a time bore no fruit, but in 1893 a Parliamentary Board appointed to enquire into sweating resulted in the Factories and Shops Act of 1896, which authorised the appointment of wages boards for certain industries. The system then set up was reorganised in 1902, and in 1903 was extended to include a Court of Industrial Appeals. The system has been further modified in a number of subsequent measures without any important changes in principle having been made. The substantive Act is now the Factories and Shops Act, 1929¹.

The System in Force

Two types of tribunals thus exist in Victoria for the prevention and settlement of collective labour disputes by means of conciliation and arbitration: wages boards and the Court of Industrial Appeals.

A wages board may be set up in any trade or industry by order of the Governor in Council. Application for such a board can be made either by a union or by a meeting of employees. It is composed of an equal number of actual employers and employees taken from the industry in question.

The Court of Industrial Appeals consists of a president, one representative of the employers and one representative of the workers. It comes into action when appeals are made against the determinations of wages boards.

¹ *Legislative Series*, 1929, Austral. 13.

A wages board when constituted consists of from four to ten representative members together with a chairman (not being one of their number) selected by these members, or, in case they cannot agree, by the Minister. Half of the members must be or have recently been *bona fide* workers and the other half *bona fide* employers in the trade or industry in question. These representatives are appointed by the Minister (in practice, after nomination by representative bodies of employers and of employees), but upon appeal being lodged by one-fifth of the employers or workers engaged in the trade or industry such appointments are cancelled and recourse is had to election.

The most important powers and functions of such a Board are : to determine the number of hours which shall constitute an ordinary week's work ; to fix the lowest rates of wages to be paid for an ordinary week's work, and, if necessary, to determine the rates to be paid to casual workers when it is thought expedient ; to fix the highest rates of wages to be paid for overtime ; discretionary power to fix piece work prices ; discretionary power to fix special rates for work done on Sundays and holidays, or to be paid to any employee (who works away from his employer's place of business) for time occupied in travelling ; and to prescribe the form of apprenticeship indenture to be used and the proportionate number of apprentices and improvers who may be employed in a factory or shop. It is to be noted, however, that certain trades, proclaimed " apprenticeship trades " under the Apprenticeship Act, 1927, come under the exclusive jurisdiction of the Apprenticeship Commission of Victoria in regard to the control and regulation of apprenticeship in such trades. Additional powers to those ordinarily conferred upon wages boards are given to certain of the boards for special purposes, as for instance making rules for regulating the allocation of places in coal mines. By an amendment made in 1927 any wages board when dealing with any question not covered by the powers conferred by the Factories and Shops Act may, by a unanimous decision of the board, including the chairman, determine any matter whatsoever with respect to conditions of employment in any trade or group of trades for which such board has been appointed.

When a wages board is considering the making of a determination it usually meets once a week, with an officer of the Department of Labour acting as secretary. After a determination has been arrived at, it is sent to the Minister of Labour and gazetted. It thereupon has force of law (subject to the possibility

of suspension by the Governor in Council), remaining in force for two years and thereafter until a new determination is made by the board.

Determinations are made by a simple majority. In 1902 an amending Act was made to include a proviso that at least two representatives of the workers on a board must vote with the employers, or vice versa, for an award to be valid, but this proviso rendered several boards unworkable and was repealed in 1903. By thus, in practice, making the determination depend in many instances on the casting vote of the chairman, the operation of wages boards is productive, to a certain extent, of arbitration rather than conciliation.

The determinations of wages boards are enforced by the officers of the Department of Labour. Where it is considered that a breach of the law is trivial, or has occurred through a mistake, a warning is usually administered. In more serious cases the Minister orders a prosecution. These prosecutions are carried out by the officers of the Department of Labour without expense to the worker. It is also open to any worker to sue in a civil court for wages owing to him.

Any person who is found guilty of a contravention of the provisions relating to wages boards is liable to a penalty of not more than £10 for the first offence, not less than £5 nor more than £25 for the second offence, and not less than £50 nor more than £100 for the third or subsequent offences. In addition to imposing a penalty, a Court of Petty Sessions may order the payment of arrears in wages to any person to whom they are due, and in default of payment, imprisonment for a term not exceeding three months may be imposed. It is noteworthy that there are no penalties for participation in a strike or lock-out, nor restrictions of the right to strike or lock-out, except that a determination may be suspended in case of strike. It is also to be noted that no declarations of the living wage are made.

The Court of Industrial Appeals consists of a president and one representative each of employers and of workers appointed by the Governor in Council. The president, who must be a judge of the Supreme Court, holds office for such period as the Governor in Council thinks fit and must sit in every Court of Industrial Appeals. The other members only act in the court for which they are appointed. They must have been actually engaged in the trade concerned for at least six months during the three years immediately preceding nomination. A majority vote decides

every reference to the court. If default is made by the employers or the employees in nominating their representative, then the President, sitting alone, constitutes the court, and may exercise all its powers. It is thus evident that the Court of Industrial Appeals acts in some essential respects as a court of industrial arbitration.

The function of the Court is to hear appeals made against the determinations of any board by a majority of the representatives of employers or of the representatives of workers upon a wages board, or by any employer or group of employers of 25 per cent. or more of the workers in any trade, or by 25 per cent. of the workers in any trade, to which a determination of a board applies. In cases of appeal thus made, the Court has power to make a final decision, but it may revise or alter its own determination at any later date on the application of either the employers' or the workers' representatives upon the board. When twelve months have elapsed after the deciding of an appeal by the Court, the wages board concerned has the right, without the leave of the Court, to review or alter this decision.

The principles on which appeals from determinations are to be decided are of particular interest, it being laid down that if the determination appealed against has had or may have the effect of prejudicing the progress, maintenance of, or scope of employment in the trade or industry affected, the Court will make such alterations as in its opinion may be necessary to remove or prevent such effect and at the same time to secure a living wage to the employees affected.

QUEENSLAND

Development

As early as 1890 a Bill was introduced into the Queensland Parliament, which included the principle of the minimum wage, but did not become law. Following on the unsuccessful maritime and shearers' strikes in 1890 and 1891, labour turned more and more to political rather than to economic action and in Queensland assumed power in coalition with another party in 1903. In 1907 the first Wages Boards Act was passed and came into force in 1908, but not until 1912 was any direct legislation enacted dealing with the maintenance of industrial peace. In that year the Industrial Peace Act was adopted, introducing for the first time in Queensland the principle of compulsory arbitration. This

measure was the direct outcome of what is known as the general strike. A union of tramway employees struck owing to the dismissal of certain of their number for wearing the union badge. A sympathetic strike, which developed into a general strike, followed. The Executive of the Government of the State, anticipating disorder, enrolled special police and requested the Federal Government to protect the State against domestic violence. The Federal Government refused to intervene and no disorder of any great consequence did in fact occur. Class and party feeling, however, ran high, and the Government, after the failure of the strike, appealed to the country on the issue and were returned to power, whereupon they implemented their election promises by passing the Industrial Peace Act. This Act established an Industrial Court, but continued the system of wage boards subject to the control of the Court, changing their name to industrial boards and giving them wider powers. Strikes and lock-outs were prohibited under the Act by a penalty of £1,000 unless fourteen days' notice was given and a secret ballot had to be taken and show a majority in favour of a strike before any strike could be legally declared.

The year 1915 saw the advent to power of the Labour Party, and in 1916 the Industrial Arbitration Act was passed. This Act was amended in 1923, 1924, 1925 and 1926 and in 1929 repealed, together with the amending Acts, being replaced by the Industrial Conciliation and Arbitration Act assented to 23 December 1929¹.

The System in Force

The Act, which applies to all callings except domestic service and agricultural work (other than sugar farming and shearing), provides for an Industrial Court, two conciliation commissioners, and conciliation boards for the various industries or callings. The machinery set up makes provision also for industrial registrars, industrial magistrates and industrial inspectors.

The Industrial Court is made up of a judge (having the qualifications of a judge of the Supreme Court) holding office for a term not exceeding five years but eligible for reappointment. The Court may appoint two assessors, one representative of the employers and one of the employees parties to the matter at issue. Provision is also made for the services of an actuary or

¹ *Legislative Series*, 1929, Austral. 6.

statistician to assist the Court, and in particular to advise it as to the probable economic effect of any award. For this purpose the actuary or statistician in question is given wide powers of enquiry.

The Court, besides dealing with specific matters in dispute, makes general declarations on the cost of living, the standard of living, the adult male and female basic or living wages, and the standard hours, with which agreements and awards made must conform. For the purpose of making such declarations the Court is constituted of the judge and the two conciliation commissioners.

Conciliation boards may be set up by the Court for a calling or group of callings with one of the two conciliation commissioners as chairman. In addition to the chairman, two or four other members are appointed for a period of three years, one-half of whom are representative of the employers and one-half representative of the employees, such members in both cases being *bona fide* employers or employees in the calling concerned.

The general form of procedure is as follows. Any industrial union or industrial association of employees or employers may make an industrial agreement for the prevention or settlement of an industrial dispute. If this is not done, the matter comes before the conciliation board for the calling in question. The board endeavours to bring about a settlement of the dispute, all powers of the board being exercised by a majority of the members. The conciliation commissioner, acting as chairman, does not have a primary vote, but, in the case of equality of voting, may have a casting vote at the request of the parties before the board.

If no award is made by the conciliation board, such matters as are left outstanding are then carried before the Court, which decides the question.

The Court has power to constitute a conciliation commissioner a conciliation board. Under the amending Act of 1930 the conciliation commissioner has authority to make an award for the industry or calling for which a board is constituted if he is satisfied that the parties are unable to agree. Up to the present no conciliation board has been appointed, but a Conciliation Commissioner is functioning as a board and making awards.

It is laid down that the court or board, before making any award or certifying any agreement, must take into consideration the probable economic effect of the agreement or award in relation

to the community in general and the probable economic effect upon the industry or industries concerned.

The Court may declare such agreements or awards thus arrived at to be the common rule for the calling in question.

In the section dealing with the question of strikes and lock-outs (section 86), it is laid down that when a dispute has arisen which may be expected to lead to a strike or lock-out, the parties, either singly or severally, shall notify the conciliation commissioner who thereupon takes the necessary action, and moreover, may take such action whether or not he is so notified. Until the dispute has been finally disposed of by the conciliation commissioner or Board or Court, neither of the parties to the dispute may do anything directly or indirectly in the nature of a strike or lock-out. Any infringement of this provision is punishable on the part of an employer by a fine not exceeding £1,000, and on the part of a union of employees by the suspension of the award in operation.

The Industrial Conciliation and Arbitration Amendment Act of 1930 abolished preference to unionists. All existing awards and industrial agreements awarding preference were rescinded in respect to the preference provisions, except in the case of returned soldiers and sailors who were to continue to have preference. Under the principal Act of 1929 many awards contained a preference-to-unionists clause. This Act provided that where it was mutually agreed by the parties concerned, or considered advisable by the Court or a board, preference of employment to the members of any particular union might be granted, subject to certain conditions in regard to membership, fees, etc.

Breaches of an award or industrial agreement are punishable by a penalty not exceeding £50 in the case of an employer and £10 in the case of an employee. Where a penalty is imposed under the Act on an industrial union or an industrial union is ordered to pay any sum, then for the recovery of such sum, process may be issued and executed against the property of such union. Proceedings in respect of offences against the Act are heard either by the Court or on remission by an industrial magistrate.

In addition to these main features the Industrial Conciliation and Arbitration Act makes provision for the protection of both employers and employees against possible discrimination on account of their being active in industrial questions or being subject to a particular award; sets up a system of registration of trade unions and provides for industrial registrars to perform

the necessary functions in this matter ; provides for industrial magistrates and the payment of wages due under an award ; and for Government inspectors whose task it is to see that the terms of an award are carried out. Provision is also made for compulsory conference where the judge of the Court, industrial magistrate or conciliation commissioner considers such to be advisable, for the holding of a secret ballot where the Court, board or conciliation commissioner so decide, and for the reference of industrial matters to other organs such as local shop committees, round table committees, industrial councils, and so forth.

SOUTH AUSTRALIA

Development

The evolution of the machinery of conciliation and arbitration in force in South Australia has proceeded along lines very similar to that in the other States. After the defeat of the Industrial Disputes Settlement Bill in 1890, no measure, with the exception of a Conciliation Act, was adopted until the establishment of industrial boards under the Act of 1900, amended in 1904. In 1912 an Industrial Arbitration Act was passed, amended in 1915 and 1916 and eventually repealed by the Industrial Code of 1920 which, as amended in 1924 and 1926¹ and supplemented by a Conciliation Act in 1929², is now in operation.

The System in Force

In South Australia the principal industrial tribunal is called the Industrial Court ; there are also industrial boards for the various industries and a Board of Industry.

The Industrial Court is composed of a president (being a person eligible for appointment as a judge of the Supreme Court) who, when the Court sits for the purpose of finally adjudicating upon an industrial matter, may be joined by two assessors (who must be engaged or employed in the industry concerned) appointed by the president, one nominated by the employers, the other by the employees, parties to the matter. Provision is also made for the appointment of deputy presidents. The Court may do anything that appears to it to be right and proper for dealing with an industrial matter or bringing about a settlement by an

¹ *Legislative Series*, 1926, Austral. 1.

² *Ibid.*, 1929, Austral. 6.

amicable agreement, including the summoning of a compulsory conference of such persons as it thinks desirable in order to end an industrial dispute or prevent one from arising. It is expressly laid down, however, that the Court " shall not have the power to order or direct that, as between members of associations of employers or employees and other persons offering or desiring service or employment at the same time, preference shall in any circumstances or manner be given to members of such association or to persons who are not members thereof ".

Awards of the Court are binding upon all parties to the matter who appear before the Court, or who are summoned to appear, as parties to the matter and may be made binding upon an entire industry if the Court declares it to be the common rule. There is no appeal from the awards of the Court, but the Court may reopen any matter on its own initiative or upon application of a party to the dispute.

Industrial boards are constituted for any industry or group of industries by the Minister of Labour on the recommendation of the Board of Industry. Such boards consist of a chairman nominated by a majority of the members and of four, six or eight other members, one-half of whom are representatives of employers and are actually engaged in the trade or industry in question, and the other half of whom are *bona fide* employees in that industry. The term of office is three years. The functions of these boards include the determination for the trade or industry in question : of the lowest wages or rates payable to employees (but not less than the declared living wage) ; of the number of hours and times to be worked in return for such wages ; of the lowest rates of wages to be paid for overtime work on holidays or for other special work ; and of any other industrial matter. Proceedings before a board are commenced by reference to the board by the Governor or by the Court or by the Minister ; or application to the board by employers or employees in the industry or calling concerned. The determination of any board is binding upon all employers and employees in the industry or calling affected, such determination being decided by a majority vote, the chairman having the casting vote but using it only when satisfied that the question cannot otherwise be determined.

The Board of Industry is composed of a president, who is the president or deputy-president of the Industrial Court, and four commissioners, two of whom are representatives of employers and two of workers. Their term of office is three years. The

functions of the Board of Industry are : to group industries and make recommendations to the Minister regarding the appointment and dissolution of industrial boards ; to deal with applications to transfer any class of employees from the jurisdiction of one board to that of another ; and to declare the living wage below which neither the Court nor the industrial board may issue a wage determination.

Strikes and lock-outs are expressly forbidden by the Act, the penalty being a fine not exceeding £500, or, in the case of a person, imprisonment for a term not exceeding three months.

WESTERN AUSTRALIA

Development

Western Australia has a particularly intricate and complete system of conciliation and arbitration which, as in the other Australian States, has been subject to continual amendment. The initial Act of 1902 (which was really an amendment of an abortive Act of a like kind adopted in 1900) was substantially similar to the corresponding Act in New Zealand. The latest Act is now that of 31 December 1925¹ supplemented 24 December 1930², amending and consolidating Acts of 1912³ and 1920.

The System in Force

The system at present in force makes provision for an Arbitration Court, industrial boards, conciliation committees, and commissions.

The Arbitration Court consists of three members appointed by the Governor, one on the recommendation of industrial unions of employers, and one on the recommendation of industrial unions of workers. The third member, being the President of the Court, must be of the status of a judge of the Supreme Court. Each ordinary member of the Court is appointed for a period of three years and is eligible for re-appointment. The tenure of office of the President is the same as that of a judge of the Supreme Court. The Governor may remove from office the President or any ordinary member on an address from both Houses of Parliament.

¹ *Legislative Series*, 1925, Austral. 12.

² *Ibid.*, 1930, Austral. 7.

³ The 1912 Act is still the substantive Act. The 1925 Act merely added to it.

An industrial board may be constituted by the Governor on the recommendation of the Court for any calling, industry or undertaking. Each such board consists of a chairman and of two or four other members, one-half of whom are representatives of employers, and one-half representatives of workers in the particular calling or industry concerned. The chairman of the Board is appointed by the nominated members, or if such members are unable to agree, by the Governor on the recommendation of the Court¹.

Conciliation committees may be set up by the Minister for any district. A conciliation committee consists of a chairman and two or four other members appointed by the Minister, one half of whom are nominated by the employers and the workers respectively, the chairman being chosen by unanimous agreement of the other members or in default appointed by the Minister².

Commissioners may be appointed by the Minister for the purpose of preventing or settling any industrial dispute and are empowered to call a compulsory conference of the parties concerned with this end in view.

The Arbitration Court has jurisdiction to deal with and determine all industrial matters referred to it by any party or parties under the Act or on account of which a compulsory conference has been held, but no agreement reached. The decision of a majority of the members present at the sitting of a Court is final. The Court also declares every year the basic wage to be paid to male and female workers. Further, it varies the basic wage each quarter if the cost of living or the price of commodities varies.

The president of the Court may, whenever desirable, call a compulsory conference including any persons, whether or not connected with a dispute, whose presence is likely to conduce to its prevention or settlement. The attendance of the president and one member is required to form a quorum. In the case of equality of voting on the part of the assessors the vote of the president is decisive.

In making an award the Court may prescribe a minimum rate of wages (but not less than the basic wage) together with such rules for the regulation of any industry as it may consider necessary. An award (as also an industrial agreement voluntarily

¹ Industrial boards have been largely availed of. They are very popular with parties to industrial disputes, and, being composed of persons who have a practical knowledge of the industry in question, they have been most successful.

² This provision in the Act is practically a dead letter, no committees having yet been appointed.

arrived at by the parties if declared by the Court to have the force of an award) becomes the common rule of any industry to which it applies.

The functions of industrial boards are the making of an award in any industrial dispute remitted to the board by the Court, and the making of recommendations to the Court as to the regulation of any calling or callings for the purpose of enabling the Court to make an award. All powers of an industrial board are exercised by a majority of the members¹.

The duty of a conciliation committee on being summoned by its chairman or at the request of the Minister is to enquire into any industrial matter or dispute and to endeavour to come to an agreement. The chairman presides at all meetings of the Committee but does not take part in the decisions.

Strikes and lock-outs are forbidden under the Act in the following terms :

- (1) No person shall :
 - (a) take part in, or do or be concerned in doing any matter or thing in the nature of a lock-out or strike ; or
 - (b) before a reasonable time has elapsed for a reference to the Court of the matter in dispute, or during the pendency of any proceedings before the Court in relation to an industrial dispute, suspend or discontinue employment or work in any industry ; or
 - (c) instigate to or aid in any of the above-mentioned acts ².

Penalty : in the case of an employer or industrial union or association, one hundred pounds ; and in other cases, ten pounds.

TASMANIA

Development

In Tasmania the wage board system was adopted in 1910 and although modified from time to time has remained in force ever since. In its main features it closely resembles the system in operation in Victoria. The substantive Act now in force is the Wages Board Act of 1920³, subsequently amended in 1924⁴ and again in 1929⁵.

¹ The awards of industrial boards are subject to appeal to the Court.

² The Act, in section 140 (2), imposes on the Registrar the duty of reporting to the Court and the Crown law officers any total or partial cessation of work, i.e. any strike or lock-out.

³ *Legislative Series*, 1924, Austral. 1 (Appendix).

⁴ *Ibid.*, 1924, Austral. 1.

⁵ *Ibid.*, 1929, Austral. 9.

The System in Force

Under this Act the Governor may by proclamation establish a wages board in respect of any trade. Such boards are made up of equal numbers of representatives of the employers and representatives of the workers in the trade in question, together with a chairman appointed by the Governor. The representative members of wages boards, both employers and workers, must be actually engaged in the trade in question. They are chosen by the Minister of the Crown administering the Act from nominees put forward by employers and employees in the trade concerned. They are appointed for a period of three years and are eligible for re-appointment.

Meetings of every board are convened by the Minister when required, and the powers of a board are exercised by a majority of the members present at any meeting, each member, except the chairman, having one vote. Where the votes for or against any matter are equal the chairman decides the question, but not unless satisfied that the matter cannot otherwise be determined.

The chief powers and functions of wages boards are to determine minimum wage rates, the number of working hours, and such matters as overtime, the time occupied in travelling to and from places of work, holidays, deductions for board or lodging, and the number of apprentices to be permitted.

Provision is made for an inspectorate to enforce the provisions of the Act and in particular to ensure that the decisions of the wages board are carried out.

Precautions are also taken to secure that employees shall not be injured in their employment by reason of their activity upon or before a Board.

§ 3. — Statistics

Statistics of strikes and lock-outs in Australia are available for a long period of years. In view of the interesting nature of the systems in operation they are given here as far back as 1913.

As will be seen, the great majority of stoppages of work, workers affected and days lost, are accounted for by New South Wales. In this State the mining industry, although forming only a very small percentage of the total employed population (under 5 per cent. during the period covered) account for some

TABLE I

State	1913	1914	1915	1916	1917	1918	1919
<i>(a) Number of strikes</i>							
New South Wales	134	235	272	336	296	138	267
Victoria	29	44	38	55	52	33	62
Queensland	17	18	17	64	39	84	69
South Australia	9	13	15	21	24	17	32
Western Australia	9	18	6	24	23	22	20
Tasmania	8	6	2	6	8	1	5
Northern Territory	1	2	7	2	2	3	5
Federal Capital Territory	1	1	1	—	—	—	—
Australia (Total)	208	337	358	508	444	298	460
<i>(b) Number of workers</i>							
New South Wales	25,647	33,955	47,006	91,762	118,515	24,417	64,956
Victoria	4,151	5,699	5,434	13,576	15,976	4,235	15,169
Queensland	1,781	1,280	1,477	17,367	12,074	8,803	9,078
South Australia	272	616	1,314	1,037	3,958	1,576	4,437
Western Australia	967	1,117	578	4,318	2,401	3,368	5,516
Tasmania	444	288	922	366	1,062	42	1,098
Northern Territory	131	68	254	120	75	112	46
Federal Capital Territory	100	50	20	—	—	—	—
Australia (Total)	33,493	43,073	57,005	128,546	154,061	42,553	100,300
<i>(c) Number of working</i>							
New South Wales	468,957	836,948	464,343	1,145,222	3,308,869	181,639	4,324,686
Victoria	85,212	84,106	64,878	228,269	760,410	165,020	733,333
Queensland	55,288	25,703	19,934	170,690	317,699	183,883	586,661
South Australia	2,412	15,275	19,877	10,583	57,446	18,276	238,378
West Australia	6,772	124,175	4,068	102,357	102,078	31,145	359,987
Tasmania	987	3,286	4,808	21,389	52,541	462	63,271
Northern Territory	2,500	552	5,237	420	615	428	1,910
Federal Capital Territory	1,400	350	80	—	—	—	—
Australia (Total)	623,528	1,090,395	583,225	1,678,930	4,599,658	580,853	6,308,226

TABLE I

1920	1921	1922	1923	1924	1925	1926	1927	1928	1929
<i>and lock-outs</i>									
349	535	342	200	416	430	256	339	230	231
53	20	29	29	30	19	33	24	21	11
55	33	38	25	25	22	29	30	12	4
40	19	19	10	14	11	17	19	8	2
45	12	8	6	13	10	9	20	11	4
12	5	5	3	5	3	10	6	4	6
—	—	2	—	1	1	2	2	1	—
—	—	2	1	—	3	4	1	—	1
554	624	445	274	504	499	360	441	287	259
<i>directly involved</i>									
68,033	108,573	88,257	54,809	116,087	123,292	68,281	108,116	70,303	75,997
15,274	4,119	5,819	6,279	9,621	5,428	6,320	8,937	4,309	8,893
3,775	3,367	2,611	2,724	2,889	20,432	2,054	29,594	2,958	1,691
4,732	2,158	2,294	806	1,546	1,118	2,008	6,517	2,257	532
9,085	1,906	643	1,255	2,131	3,321	523	3,345	2,106	827
1,610	75	382	197	268	169	660	354	371	333
—	—	40	—	27	16	93	338	45	—
—	—	217	23	—	823	829	380	—	20
102,519	120,198	100,263	66,093	132,569	154,599	80,768	157,581	82,349	88,293
<i>days lost</i>									
587,156	547,838	586,520	892,306	706,796	649,840	1,111,230	1,133,963	480,394	3,146,038
783,286	109,595	64,701	98,880	66,567	131,737	100,735	54,367	110,659	1,296,676
68,298	95,560	36,730	55,131	47,214	219,826	30,118	428,135	70,764	3,443
232,402	57,038	114,334	25,971	19,459	19,463	22,836	51,284	54,835	9,040
146,640	145,103	43,472	72,274	66,734	98,941	9,081	23,819	54,896	2,672
54,283	1,483	9,284	1,093	11,606	2,989	5,080	14,950	5,595	3,409
—	—	1,040	—	270	39	996	5,163	135	—
—	—	2,604	322	—	5,735	30,185	1,900	—	200
1,872,065	956,617	858,685	1,145,977	918,646	1,128,570	1,310,261	1,713,581	777,278	4,671,478

TABLE II
Awards and Determinations Made and Industrial Agreements Filed

State	1914		1915		1916		1917		1918		1919		1920		1921	
	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed
New South Wales	97	50	145	25	200	49	108	43	97	39	132	48	139	64	99	40
Victoria	47	—	53	—	86	—	65	—	76	—	69	—	125	—	106	—
Queensland	41	4	35	10	69	42	63	42	125	61	127	29	168	23	76	16
South Australia	2	9	8	5	29	6	39	3	29	10	51	8	74	11	70	28
Western Australia	9	25	18	21	14	13	4	28	9	26	6	37	2	65	7	40
Tasmania	6	—	8	—	14	—	7	—	15	—	21	—	54	—	20	3
Commonwealth Court	6	42	7	182	14	21	33	135	22	213	21	160	32	183	34	315
Commonwealth Public Service Arbitrator	—	—	—	—	—	—	—	—	—	—	—	—	—	—	10	—
Totals	208	130	274	243	426	131	319	251	373	349	427	282	594	346	422	442
	1922		1923		1924		1925		1926		1927		1928		1929	
	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed	Awards or Determinations made	Agreements filed
New South Wales	69	36	60	53	58	56	32	35	151	51	163	33	93	36	55	27
Victoria	36	—	82	—	78	—	67	—	106	1	74	—	73	—	46	—
Queensland	71	15	31	15	55	20	105	33	90	27	56	18	34	27	21	16
South Australia	40	5	38	5	58	4	47	5	14	7	15	4	14	4	13	9
Western Australia	16	10	13	17	11	37	4	66	10	37	6	57	19	28	15	29
Tasmania	15	3	14	1	13	2	5	1	7	2	4	—	10	3	4	2
Commonwealth Court	42	34	64	34	44	45	56	42	50	30	34	25	40	30	29	26
Commonwealth Public Service Arbitrator	6	—	4	—	4	—	4	—	10	—	1	—	6	—	4	—
Totals	295	103	306	125	321	164	320	182	438	154	353	137	289	128	187	109

three-quarters of the stoppages and the number of workers affected and about two-thirds of the total number of days lost.

An interesting feature of strikes and lock-outs in Australia is the relatively small proportion ascribed to wage disputes. In most countries between two-thirds and three-quarters of the total stoppages of work are due in part or whole to wage questions. In Australia the proportion of strikes and lock-outs attributable to wage questions varies between 23 per cent. and 45 per cent., averaging approximately only one-third of the total number. Wage questions, however, are still the chief of the various causes of strikes and lock-outs.

Turning to the methods of settlement, relatively few of the actual stoppages of work are settled by means of the official conciliation and arbitration machinery. On the other hand, as the table showing Awards and Determinations Made and Industrial Agreements Filed (table II) indicates, the number of cases dealt with by the official organs which did not involve a stoppage of work is large.

To arrive at any definite conclusion as to the general opinion held in Australia of the systems of conciliation and arbitration in force is virtually impossible. So far as can be seen, at almost any time there is a strong feeling against the actual system in operation, coupled with a fairly persistent faith in compulsory arbitration as a method. Resolutions both by workers' organisations and by employers condemning the existing methods are relatively frequent and opposition to the compulsory features is frequently voiced by employers' organisations. But for all this, no strong movement would appear to exist having as its object the abolition of what would now appear to be an established feature of industrial life in Australia.

While it is out of the question to give what might be taken as typical utterances concerning particular features of the methods adopted, the following reflections on the central problem of enforcement of the provisions prohibiting strikes and lock-outs are of interest.

Mr. Bruce, then Prime Minister, speaking in 1925 with reference to the Commonwealth Arbitration Court, put out one of the main difficulties encountered: "In the last degree the decision of the Court is not enforceable upon the men who are not disposed to accept its award. It is easy to make an employer observe certain conditions and pay a stipulated wage; it is impossible under present circumstances to make the employee observe those

conditions or accept that wage. So arbitration, unless voluntarily accepted, applies only to one side."

It might be inferred from this that compulsory arbitration offers no advantages to employers. The following extract from an address delivered by the late Mr. Justice Higgins, ex-President of the Commonwealth Arbitration Court, on 14 June 1924, puts in succinct form the chief of the reasons why compulsory arbitration is of value to "reasonable employers":

It ought to be understood also that this Court has no power to award except so far as it cannot secure agreement between the contending parties. Its first duty is to try to conciliate, to get an agreement; and now that the standards of the Court are known, there is much more agreement than award. The agreement when signed, certified and filed, operates as if it were an award of the Court. It is enforceable as if it were an award. But without the power to award in the final resort, there often could be no agreement procured. A few unreasonable employers could often hold up a whole industry. If there are a thousand reasonable employers willing to concede a certain point to the union, and twenty employers unreasonable, or unwilling even to discuss an agreement, the thousand could often not afford to give concessions which the twenty others, their competitors in business, would not give. It is necessary to have the power to award in reserve so that an agreement may be reached — so that the agreement, if any, may not be on the lines dictated by the few obdurate employers. The ideal of the Court is to secure regulations such as would be fitting for a fair collective agreement and the power to award is held by the Court in reserve, as a whip behind a horse. What the reasonable employers are willing to concede is generally a very good indication of what the unreasonable employers ought to be forced to concede.

The late Justice McCawley, President of the Queensland Court of Industrial Arbitration, in his book *Industrial Arbitration*, sums up the position on the question of enforcement:

. . . The fact that strikes are illegal has not succeeded in wholly preventing them. A law against an offence is seldom effective in absolutely preventing it. It cannot be said that the statutory prohibition of strikes has been wholly ineffective. No one can say how many strikes have been prevented by means of the statutory prohibition.

It can, however, be stated that many workers have, notwithstanding the prohibition of strikes, resorted to them with impunity. So numerous have been these strikes that they have been proclaimed as indicating the failure of compulsory arbitration.

. . . Just as the absolute prohibition of strikes has been largely ineffective, so has the imposition of conditions. Moreover, numerous breaches of the prohibiting sections have been allowed to pass without any attempt at punishment.

The difficulty of enforcing penalties against strikers is partly political, partly practical. The punishment of large numbers of strikers by prosecutions is in practice a difficult matter. The enforcement of the penalties is usually opposed by one or other political party. The employer does not care to launch the proceedings for fear of

subsequent victimisation. The officials who are charged with the administration of the Acts are under the control of their political superiors and do not care to and would not be allowed to enforce penalties against the policy of those superiors. It would be more satisfactory than at present were the duty of enforcing penalties for illegal strikes laid definitely upon the officials. Even then, unless their tenure of office were made secure, they might suffer detriment from doing their duty.

It may be urged that if the penal provisions are not enforced they should be deleted, the prohibition being little more than a sham. On the other hand, it may be maintained that the law as it stands is a declaration that the will of the people is against strikes, and the existence of the statutory prohibition makes the illegal striker a wrongdoer and, even if he escapes punishment, public opinion regards his action with disapproval.

In practice the deterrent against strikes is the recognition of the fact that, since arbitration has been on the whole beneficial to the unions, deprivation of access to the industrial tribunals is a substantial loss, and strikes endanger such access. Courts may thus discourage strikes by warning unions that they may be deprived of preference, deprived of an award, or even deprived of registration should they resort to strikes — even to lawful strikes. Unions are thus forced to elect between arbitration and the strike.

§ 4. --- Summary

The multiplicity of systems and the kaleidoscopic changes that have taken place year by year make the machinery of conciliation and arbitration in Australia particularly hard to follow. Certain distinguishing features are nevertheless fairly evident. In the first place there is the underlying determination to decide industrial disputes as far as possible by principles of equity and social justice rather than by bargaining strength. This has involved two measures of major importance: the institution of a minimum wage and the provision for compulsory arbitration or some kindred process.

Two typical forms of machinery exist: the joint board with or without an impartial chairman, sometimes permanent, sometimes constituted *ad hoc*, to deal with disputes in particular industries; and the Arbitration Court, in which awards are given by judges having a legal background and training and as a general rule experienced in labour matters.

The preference of organised over non-organised workers is a much debated question of Australian legislation on conciliation. Whereas some of the States insist on union preference, it is in others only admissible under certain conditions and sometimes not at all.

It is significant that according to most of the regulations (with the exception of the Commonwealth Act) awards or collective agreements can be extended by the competent authority so as to cover the whole of a trade or a given district.

Among the many difficulties encountered, the overlapping of Federal and State awards has resulted in much confusion and controversy. An outstanding feature in many respects is the extent to which conciliation and arbitration legislation has become involved with political questions.

The present status of compulsory arbitration in Australia is more or less anomalous. Very little but criticism is heard of the systems actually in force, but there is no strong movement — indeed rather the opposite — for the abolition of compulsory arbitration as a method. Whether on the whole the system has made for a reduction in industrial disputes is a doubtful question, although the relatively small proportion of strikes and lock-outs over wage questions is perhaps significant. But since the fundamental object of the system is fully as much social justice as industrial peace, the number and extent of labour disputes is less indicative of the success or otherwise of the system than is the case in other countries, where the purpose of conciliation and arbitration is primarily the prevention and settlement of strikes and lock-outs.

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NEW ZEALAND

§ 1. — Economic Background and Development

The population of New Zealand in 1928 was 1,443,323, including some 60,000 Maoris. The white population is of relatively recent arrival — at the first census held in 1858 it numbered 59,413 — and is almost exclusively British in origin. New Zealand is a country of immigration, but not on a very large scale. In 1927 the net immigration numbered 3,809; the average annual figure for the period 1921-1925 was approximately 10,000.

New Zealand is predominantly agricultural and pastoral. The number of farm employees in 1928 amounted to 129,481. There is, however, a considerable amount of manufacturing, the numbers engaged in factory production in 1926-1927 being 81,904 of whom approximately 82 per cent. were wage earners. Mining is also an occupation of some importance, 9,486 persons being thus employed during 1927, more than half of them in coal mines. Both employers and workers are organised under the Industrial Conciliation and Arbitration Act¹. In 1927 there were 136 industrial unions of employers having 5,072 members and 401 industrial unions of workers having 101,071 members registered under this Act². The outstanding feature of New Zealand, apart from the relatively recent date of settlement, is its physical isolation, the nearest mainland — Australia — being some 1,200 miles distant.

The system of conciliation and arbitration in New Zealand is entirely Governmental. It is embodied in two Acts, the Industrial Conciliation and Arbitration Act and the Labour Disputes Investigation Act.

The first Industrial Conciliation and Arbitration Act providing for compulsory arbitration of industrial disputes was passed in 1894. Its object was to encourage the formation of industrial unions and associations, both of workers and of employers, and to facilitate

¹ *Legislative Series*, 1925, N.Z. 1.

² Cf. *Freedom of Association*, Vol. V, pp. 281 et seq.

the settlement of industrial disputes. It provided for the registration of bodies of workers or employers in the various industrial districts under the name of " industrial unions ", and of councils or other bodies representing any number of such unions as " industrial associations ". It made provision also for the conclusion of industrial agreements, for the formation of industrial districts, the election of boards of conciliation and for the setting-up of a court of arbitration. Since 1894, the Act has been repeatedly amended and consolidated, the substantive Act now being that of 1925. The more important of these amendments may be briefly noted.

In 1898 an amendment was passed empowering the Court of Arbitration in its awards to prescribe minimum rates of wages, with special provision for a lower rate being paid in the case of workers unable to earn the prescribed minimum. An amendment passed in 1903 prohibited any employer, worker or union from taking proceedings to defeat any of the provisions of an award during its currency. In particular it forbade an employer dismissing any employee merely because he was entitled to the benefit of an award or merely because he was a member of a union. In 1905 an amendment was passed providing for the punishment by fine of any employer or worker, bound by an award or industrial agreement affecting an industry, who took part in a strike or lock-out in that industry. In 1908 certain public utility industries, such as gas manufacturing, the supply of milk or meat, tramway services, etc., were made the subject of special penal provisions.

The same amending Act of 1908 made an important change in the constitution of conciliation bodies. The original Act prescribed reference to conciliation first and arbitration afterwards if no settlement were arrived at. The amending Act of 1901 provided that a dispute might go directly to the Court of Arbitration without prior hearing before a board of conciliation. This amendment was in turn repealed by the 1908 amendment, in which it was laid down that disputes could be referred to the Court of Arbitration only after they had been dealt with by councils of conciliation. These councils, moreover, were constituted on a different pattern from the boards previously in existence. The boards had consisted of from four to six persons chosen in equal numbers by industrial unions of employers and workers respectively, holding office for a definite period and presided over by a chairman elected from outside their number. Such boards dealt with all disputes referred to them, no matter in what industry they occurred. The councils of conciliation set up by the 1908 amending Act are constituted

on a totally different plan. Four conciliation commissioners appointed by the Government are assigned jurisdiction over specific areas. When a dispute is referred to any one of them, he obtains the names of suitable assessors from both sides and from the industry in which the dispute has arisen, the conciliation commissioner and the assessors thus selected making up the conciliation council. The councils are thus newly constituted for each dispute and, in contrast with the earlier boards which had a fixed tenure and personnel, consist of men familiar with the industry in which the dispute has occurred. The decision of a conciliation council is not binding, but disputes must be referred to a council before they can be referred to the Court of Arbitration.

A further amendment in 1911 empowered the Court to make an industrial agreement into an award, provided such agreement did not conflict with an existing award or was not contrary to the public interest. It also provided that recommendations of conciliation councils should become in effect industrial agreements if none of the parties to a dispute disagreed with such recommendations.

Since the consolidation of the Act in 1925 (previous consolidations having been effected in 1900, 1905 and 1908), two amendments have been adopted, one temporarily excluding agriculture, pastoral and dairying operations from awards, the other permitting industrial agreements and awards to be made for or extended to a term of five years.

The Labour Disputes Investigation Act, which was passed in 1913, applies to all disputes to which the Industrial Conciliation and Arbitration Act does not relate — namely, where there is no award or industrial agreement or accepted recommendation in force. By this Act the principle of the settlement of industrial disputes by conciliation and arbitration is extended to workers outside the scope of the Court of Arbitration, so that the system now in operation covers the whole field of industry in New Zealand. The powers under this Act are not so far-reaching as those under the Arbitration Act, its main object being that workers or employers should take time for the consideration of the point at issue in a dispute and not precipitate a stoppage of work.

It is interesting to note that with the progressive evolution of the system of conciliation and arbitration in New Zealand, the scope of the awards made has been gradually widened. In particular the 1898 amendment, empowering the Court of Arbitration to prescribe minimum rates of wages, added very considerably to its powers, so that at the present time awards include provisions regulating

conditions of employment in minute detail. Since the working conditions laid down by the awards of the Court of Arbitration are better than those prescribed by the Factory Acts, these Acts have in practice become a dead letter so far as workers under the jurisdiction of the court are concerned.

§ 2. — The System in Force

Of the two Acts in force in New Zealand — the Industrial Conciliation and Arbitration Act and the Labour Disputes Investigation Act — the former is by far the more important.

THE INDUSTRIAL CONCILIATION AND ARBITRATION ACT

This Act as consolidated in 1925 may be usefully dealt with in four parts :

- (1) The regulations governing the setting-up of industrial unions and the conclusion of industrial agreements ;
- (2) The arrangements made for conciliation ;
- (3) The arbitration court and procedure ;
- (4) Penal provisions.

Industrial Unions and Industrial Agreements

Any society consisting of not less than three persons in the case of employers or fifteen persons in the case of workers, lawfully associated for the purpose of protecting or furthering the interests of employers or workers, may be registered as an industrial union, thereby becoming a body corporate. The registrar of industrial unions may refuse to register a society as an industrial union in any case where he is of opinion that in the same industrial district (as constituted by the Governor-General under the Act) there exists an industrial union to which the members of such society might conveniently belong. Any council or other body representing not less than two industrial unions connected with one industry or related industries may be registered as an industrial association.

Industrial unions or industrial associations or individual employers may be parties to industrial agreements under the Act. Every such industrial agreement is binding on the parties thereto and on every member of any industrial union or industrial association party to the agreement. Whenever it is proved to

the Court of Arbitration that an industrial agreement is binding on employers who employ a majority of the workers in the industry to which it relates in the industrial district in which it was made, the Court may, if it thinks fit, on the application of any party to that agreement, make an order extending the operation of that agreement to all employers engaged in that industry and district, and all such employers are thereupon deemed to be parties to the agreement and are bound by it.

Conciliation

Conciliation under the Industrial Conciliation and Arbitration Act is carried out by what are called councils of conciliation. These councils are composed of a conciliation commissioner and assessors.

Conciliation commissioners are appointed by the Governor-General to a number not exceeding four for a period of three years, with possibility of reappointment, to exercise jurisdiction within such industrial district or districts as may be assigned. When a council of conciliation is to be set up, the appropriate commissioner obtains the names of one, two or three assessors from each side and, if he judges fit, appoints them to act on the council. Such assessors must be or have been actually engaged or employed either as an employer or as a worker in the industry in which the dispute to be dealt with has occurred and may be one of the parties to the dispute.

An industrial union or association of unions of workers registered under the Act may cite a union or association of unions of employers or a single employer or a number of employers before a council of conciliation. Similarly, an industrial union or association of unions of employers or an individual employer or a number of employers may cite a union of workers in a similar manner. The workers may compel any of their employers to appear under the Act, but the employers cannot compel their workers to appear unless the latter have registered as an industrial union or association, which registration is voluntary.

An industrial dispute cannot be referred for settlement to a council of conciliation until the proposed reference has been approved by the members of the industrial union or association concerned by a resolution passed by secret ballot at a special meeting of the union. No industrial dispute can be referred to the Court of Arbitration until it has been first referred to a council of conciliation.

In the course of the enquiry the conciliation council may hear any evidence that it thinks fit, whether such evidence would be legally admissible in a court of law or not. The proceedings may be either public or private, as the council thinks fit. The commissioner has the power of summoning witnesses and of taking evidence on oath and of requiring the production of books and papers. No barrister or solicitor is allowed to appear or to be heard before the council.

If a settlement of the dispute is arrived at in the course of the enquiry, the terms of the settlement are set forth as an industrial agreement. If no settlement of the dispute is arrived at, the council endeavours to induce the parties to agree to some temporary and provisional arrangement until the dispute can be determined by the court of arbitration. If the council is satisfied that a settlement of the dispute is not likely to be arrived at, a notification is given to that effect. Before delivering any such notification the council may make a recommendation for the settlement of the dispute, provided that such recommendation is unanimously agreed to by all the assessors. Such a recommendation has no binding force, but is regarded as a suggestion for the amicable settlement of the dispute and as a public announcement of the opinion of the council as to the merits of the dispute. If within a month the parties concerned do not give notice of disagreement with a recommendation, such recommendation becomes binding in the same manner as an industrial agreement.

Arbitration

The Court of Arbitration consists of three members appointed by the Governor-General. Of these three members one is a judge having the qualifications of a judge of the Supreme Court, one is a member appointed on the recommendation of industrial unions of employers, and one a member appointed on the recommendation of industrial unions of workers.

In the event of no agreement, or of a partial agreement only, being arrived at as a result of the endeavours of the council of conciliation, the whole matter is referred to the Court of Arbitration. After hearing argument upon the matters not agreed upon, the Court makes its award, which becomes binding upon the employers specified in the award, upon any employers commencing business in the district subsequently to the date of the award and upon all persons working for such employers. In many cases the disputes are taken to arbitration, even when virtual agreement has been

arrived at in the conciliation council, by reason of the fact that the parties find it more convenient to have the agreement in the form of an award. The usual practice, since the arbitration court has no jurisdiction in the case of complete agreement, is to disagree *pro forma* on one or more points, thereby enabling the court to make an award in accordance with the recommendation of the council of conciliation.

The proceedings of the Court are conducted in public except when the court on its own motion or on the application of any of the parties directs otherwise. Any party to the proceedings may appear personally or by agent or, with the consent of all the parties, by barrister or solicitor, and may produce before the court such witnesses, books and documents as he thinks proper. The decision of a majority of the members present at the sitting of the Court, or, if the members present are equally divided in opinion, then the decision of the judge, constitutes the decision of the court. The awards made are framed in such manner as to avoid technicalities. They specify, in particular, the parties on whom the award is binding, the industry to which the award applies, the industrial district to which the award relates, the currency of the award, and what is and is not to be done by each party to whom the award applies.

Penal Provisions

The Industrial Conciliation and Arbitration Act lays down a number of penal provisions of which the following are the most important. Where an industrial dispute has been referred to a council of conciliation neither the parties to the dispute nor the workers affected by the dispute may take part in a strike or lock-out on account of the dispute, the penalty being a fine not exceeding £50 upon any union, association, employer or worker or person committing or concerned in such a default. Dismissal of a worker by an employer pending the final disposition of an industrial dispute or on the grounds that the worker is an officer or member of an industrial union, has acted as an assessor on a council of conciliation, has represented his union in any negotiation, or merely because such worker is entitled to the benefit of an award, is also liable to a penalty not exceeding £25. The printing or publishing of anything calculated to obstruct or in any way interfere with a matter before a conciliation council or the arbitration court is liable to a fine not exceeding £50. Strikes and lock-outs occurring in an industry bound by an award

or industrial agreement render workers liable to a penalty not exceeding £10 and employers to a penalty not exceeding £500. Persons who incite, instigate, aid or abet an unlawful strike or lock-out are liable, if workers, to a penalty not exceeding £10 and, if an industrial union, industrial association, trade union, employer or any person other than a worker, to a penalty not exceeding £200.

Persons employed in certain public utility undertakings who go on strike without having given to the employer within one month before striking not less than fourteen days' notice in writing of the intention to strike, are liable on summary conviction to a fine not exceeding £25. A lock-out under similar circumstances is liable to a fine not exceeding £500. Incitement, instigation, etc., of such offences is liable to a fine not exceeding £25 if committed by a worker, and £500 if committed by a union or person other than a worker.

Every industrial union, industrial association or employer who commits a breach of an award or industrial agreement is liable to a penalty not exceeding £100, and every worker who commits such a breach to a penalty not exceeding £5.

THE LABOUR DISPUTES INVESTIGATION ACT

As already noted, the Labour Disputes Investigation Act, 1913, applies to all disputes not covered by the Industrial Conciliation and Arbitration Act. Under this Act, if a dispute arises between a society or societies of workers (whether registered or not), that are not bound by any award or industrial agreement, and their employers, the society must give to the Minister of Labour formal notice of the dispute, setting forth the names of the parties of the dispute and the claims made by the society, before a strike may be declared. The Minister then refers the dispute to a conciliation commissioner to call a conference or to a "labour disputes committee" for investigation and recommendation. Such a committee consists of from one to three members chosen from each side, with an independent chairman. In the event of no settlement being arrived at, a secret ballot is taken by the Registrar of Industrial Unions among the members of the society as to whether, in the case of no recommendation having been made, a strike should take place, or, in the case of a recommendation having been made, as to whether the recommendation should be adopted. In the event of a strike being decided upon, seven days'

notice must be given to the employers. In the event of an agreement being arrived at, it may be filed with the Clerk of Awards, in which case it is enforceable in the same manner as an industrial agreement under the Industrial Conciliation and Arbitration Act. Similar provisions apply to the filing of a dispute, and to a lock-out, by employers.

§ 3. — Results and Opinions

In the early days of the Industrial Conciliation and Arbitration Act the system in force, while opposed by the employers, was warmly supported by the workers and for nearly a decade New Zealand was, in fact, the "land without strikes" it was widely acclaimed to be. About 1903 the tide of opinion changed, the workers opposing the Act and the employers tending rather to support it. Since then both parties, while objecting to certain specific features, would appear to have come to regard State conciliation and arbitration as the most effective method of dealing with industrial disputes; but while this is so, a considerable number of stoppages of work now take place each year.

The tables on page 647 show the number of stoppages of work occurring in New Zealand during the last ten years and the means by which a settlement was ultimately reached during the years 1923-1930.

From the figures given in the second of these tables it would appear at first sight as if the machinery of conciliation and arbitration was a decided failure. The truth is, of course, that this machinery is not designed to deal with industrial disputes once they have proceeded to the strike and lock-out stage, but is intended essentially to deal with industrial disputes in their incipiency. The first of the tables on page 648, showing year by year the number of industrial agreements, recommendations and awards, as from 1904, gives a better idea of the usefulness of the conciliation and arbitration machinery and particularly the valuable results achieved by conciliation. The second table sets out in greater detail the results of the work of the conciliation machinery.

The attitude of employers and workers towards conciliation and arbitration in New Zealand has varied considerably during the thirty odd years that the system has been in operation. The adoption of the original Act in 1894 was accompanied by some public feeling, but the attitude of employers and workers was for the most part almost apathetic. When in 1896 the Act actually

came into force, however, this apathy disappeared. The workers supported the Act enthusiastically, while the employers resolutely opposed it, refusing in large part to recognise the Act, neglecting to organise and failing to nominate employer members of the boards of conciliation.

STOPPAGES OF WORK, 1921-1930

Year	Stoppages of work	Number of workers involved	Number of working days lost
1921	77	10,433	119,208
1922	58	6,414	93,456
1923	49	7,162	201,812
1924	34	14,815	89,105
1925	83	9,905	74,552
1926	59	6,264	47,811
1927	38	4,476	12,485
1928	39	9,258	21,997
1929	47	7,151	25,889
1930	38	5,467	31,669

METHODS OF SETTLEMENT OF STOPPAGES OF WORK,
1923-1930

Method of settlement	1923	1924	1925	1926	1927	1928	1929	1930
Number of stoppages of work								
Negotiations under the Industrial Conciliation and Arbitration Act	3	—	—	1	4	8	8	6
Compromise between parties to the dispute . . .	9	11	15	19	5	17	11	8
Substitution of other workers	1	2	—	5	2	4	1	3
Otherwise	36	21	68	34	27	10	27	21
Totals	49	34	83	59	38	39	47	38
Number of workers involved								
Negotiations under the Industrial Conciliation and Arbitration Act	260	—	—	20	596	531	408	880
Compromise between parties to the dispute . . .	2,887	1,169	1,210	2,562	1,340	2,344	1,868	894
Substitution of other workers	98	10	—	108	56	29	23	78
Otherwise	3,917	13,636	8,695	3,574	2,484	6,354	4,852	3,615
Totals	7,162	14,815	9,905	6,264	4,476	9,258	7,151	5,467

AGREEMENTS, RECOMMENDATIONS AND AWARDS, 1904-1930

Year ending 31 March	Industrial agreements filed	Recommendations of councils of conciliation	Awards of the court of arbitration
1904	19	13	25
1905	15	10	26
1906	5	7	52
1907	4	12	59
1908	10	15	98
1909	12	9	88
1910	14	102	89
1911	17	87	74
1912	25	119	80
1913	32	118	94
1914	42	166	93
1915	34	93	71
1916	21	134	102
1917	63	159	168
1918	45	123	114
1919	37	137	130
1920	51	168	131
1921	31	250	220
1922	16	142	150
1923	19	146	131
1924	18	118	91
1925	22	153	135
1926	21	118	109
1927	20	134	126
1928	15	90	69
1929	20	66	55
1930	14	50	61

DISPUTES REFERRED TO AND DISPOSED OF BY COUNCILS OF
CONCILIATION, 1920-1930

Year	Total	Industrial agreements arrived at		Recommendations fully accepted and forwarded to the court to be made into awards	Where recom- mendations were substan- tially accepted or agreements reached and referred to court to make awards	Where only minor recom- mendation or no recommen- dation was made
		Through commis- sioners	Through councils			
1920	184	9	7	109	46	13
1921	258	6	2	166	62	22
1922	147	4	1	45	62	35
1923	157	7	4	40	73	33
1924	130	11	1	64	44	10
1925	171	17	1	84	43	26
1926	133	8	7	69	38	11
1927	142	8	---	70	55	9
1928	91	5	1 ¹	56	23	9
1929	85	8	2	37	29	9
1930	70	13	1	28	22	6

¹ Recommendation fully accepted and filed as such.

After a few years, however, the attitude of both parties changed, the workers becoming dissatisfied, while the employers dropped their intransigent attitude of earlier years and showed themselves, if not strongly in favour of the measure in theory, certainly inclined to support it in practice. The probable reason for this change of attitude was that in the earlier years the general industrial prosperity and steadily rising price level enabled the Court to allow practically all the claims made by the workers, while from 1903 onwards it was not possible for the Court to award such general advances as during the earlier years.

The most recent expressions of opinion on the part of employers and workers would seem, however, to show both sides decidedly in favour of the arbitration system as a whole, although inclined to oppose certain specific features of the system. At a conference convoked by the Government in March 1928 the Employers' Federation gave as its opinion that the Court had diminished industrial conflict and had "broken down the old hostility of employers to trade unions and produced a friendly atmosphere of collective bargaining". While definitely in favour of the retention of the Court of Arbitration, the Employers' Federation nevertheless complained of the one-sided operation of the Act, inasmuch as its machinery can be set in motion by any registered union of workers against any employer or group of employers, but a registered union of employers can file a citation only if there exists a registered union of workers. From the employers' point of view, reference to the court thus appeared as "not compulsory but optional — the option being entirely that of the workers"; and the view was put forward that the compulsory element should be abolished and the system made wholly optional.

The workers at this conference were in agreement with the employers in so far as the retention of arbitration was concerned, but they definitely opposed making reference to the Court an optional proceeding. Their chief allegation against the Court was that it had not given them justice in certain specific decisions and in particular had attempted to maintain the standard of living obtaining in 1914.

§ 4. — Summary

The system of conciliation and arbitration in force in New Zealand is of particular interest inasmuch as it represents a thoroughgoing attempt, continued over a long period of years,

to deal effectively with the problem of industrial relations. Modifications have been made at frequent intervals and the methods now in operation are the outcome of persistent experiment.

The essential features of the system are the measures taken to encourage the organisation of both employers and workers, the principle of the common rule for the whole of an industry in a particular industrial district, the recourse to conciliation prior to arbitration proceedings, and the wide scope and compulsory nature of the awards made when disputes are carried to the Court of Arbitration. Experience has led to the adoption of a system of conciliation which, on the whole, would appear to work well — the setting up of *ad hoc* councils composed of practical men from either side who are working or have worked in the industry in which the dispute has occurred, presided over by an official conciliation officer. And although neither employers nor workers express themselves as whole-heartedly in favour of the Court of Arbitration, both would oppose its abolition.

In sum, the system in force in New Zealand, while far from being the panacea it was once thought and while subject to a running fire of criticism from both sides, may be considered as having achieved a considerable measure of success. But, it need hardly be added, in drawing conclusions from New Zealand experience and applying them to other lands, the peculiar conditions of an island dominion remote from other countries, having a sparse and homogeneous population, chiefly engaged in agriculture and pastoral pursuits, must continually be borne in mind.

SUPPLEMENTARY NOTE

New Zealand, like nearly every other country in the world, is at present in the grip of the general economic depression. For motives of economy, the Government has been obliged to adopt drastic measures affecting not only civil servants and pensioners but the working class as a whole. The Finance Act (No. 1, 1931)¹ provides for an all-round reduction of 10 per cent. on the salaries of civil servants. It also empowers the Court of Arbitration to alter, by means of general orders, the provisions concerning wages laid down by arbitration awards and industrial agreements. The Court of Arbitration may act upon this authorisation at

any time up to the end of 1932 and at intervals of not less than six months.

In practice, this provision makes an important breach in the legislation governing conciliation and arbitration, the effect of which is to bring about wage reductions.

During the budget debate in October 1931, the Minister of Finance declared that many of the provisions and restrictions imposed by arbitration awards must be looked upon as serious handicaps to the labour market, and that the present economic situation demanded greater elasticity. He considered that the existing legislation on conciliation and arbitration should be amended along the lines suggested at the Industrial Conference of 1928. The employers' proposals, which the Minister appears to have had in mind, aimed substantially at abolishing compulsory arbitration and providing that conciliation procedure alone should remain compulsory.

The expected amendment of conciliation and arbitration legislation in New Zealand was effected by the Act of 27 April 1932¹. The new measure abolishes almost completely the compulsory element in arbitration and lays greater stress on conciliation procedure. It repeals the fundamental provision of the basic Act of 1925, which stipulated that in the event of the breakdown of conciliation the dispute was to be compulsorily submitted to the Court of Arbitration, and introduces in its place an entirely different procedure allowing reference to the Court of Arbitration only on the unanimous or majority decision of the council of conciliation.

If the council of conciliation is able to arrive at an agreement, the terms thereof are at once submitted to the Clerk of Awards and filed as an agreement; but at any time within one month any party bound by the agreement may apply to the Court of Arbitration for total or partial exemption, and the Court, in its discretion, may grant or refuse such exemption.

If the council of conciliation does not succeed in reaching an agreement, the dispute may go on to the Court only if the following conditions are complied with:

1. in case of a dispute confined to one district:

- (a) where there are four assessors on each side, at least three of the assessors on each side must vote in favour of a proposal to refer the dispute to the Court;

¹ *Ibid.*, 1932, N. Z. 1.

- (b) where there are less than four assessors on each side, all the assessors must vote to refer the dispute to the Court.
- 2. In the case of a dispute extending over two or more districts :
 - (a) where there are six or seven assessors on each side, five assessors on each side must vote to refer the dispute to the Court.
 - (b) where there are less than six assessors on each side, all the assessors must vote to refer the dispute to the Court.

If these conditions are not fulfilled, the council of conciliation may decide by a majority vote to adjourn the proceedings for a period of fourteen days, after which the procedure is the same as at the original sitting. If no agreement is arrived at after the adjournment and the necessary majority to refer the dispute to the Court is not obtained, the Clerk of Awards is notified accordingly, and on the expiration of one month from the date of such notification every award or industrial agreement theretofore binding upon the parties until the conclusion of a new agreement or the issue of a new award is deemed to be cancelled.

Any cases before the Court of Arbitration when the Act comes into force must be referred back to the conciliation council to be dealt with in accordance with the new procedure.

Notwithstanding any provision in an agreement or award current when the Act comes into operation, either of the parties may make application for its review provided that the award has been in force for not less than six months and has at the time of the application an unexpired term of not less than three months. If the procedure does not lead to the conclusion of a new agreement or the issue of an award, the existing agreements and awards are deemed to be cancelled.

A further provision lays down that the Court of Arbitration shall provide in awards and agreements for the setting up by the parties of industrial committees to promote peaceful industrial relations in general, and in particular the harmonious working of awards and agreements. Such committees are not, however, to deal with disputes arising out of wages or hours of work.

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INDIA

§ 1. — Economic Background and Development

India proper is an area of 1,805,000 square miles with a population which, in 1921, numbered approximately 319 millions. British India (as distinguished from the Indian States) comprises 61 per cent. of the area and 78 per cent. of the population. In 1927-1928 the annual emigration under the Indian Emigration Act was 222,169.

India is essentially an agricultural land. The proportion of the population dependent upon organised industries is only about 4 per cent. as compared with over 70 per cent. supported by agriculture. Industry as a whole supports some 10 per cent. of the population, but these are for the most part occupied in unorganised industries connected with the supply of personal and household necessities and simple implements of work.

The workpeople engaged in industry, moreover, differ widely from the industrial population to be found in other manufacturing countries. They have been aptly described as “ agriculturalists first and agriculturalists last ”. To a great extent, they come to the towns, usually without their families, and work in the factories until they have funds enough to return to their villages. A large proportion of the industrial population is consequently a shifting and altogether uncertain quantity. It would seem, however, that “ a permanent factory population may grow up in the great industrial centres of India. . . . Men come and go in remarkably large numbers, but especially in the case of highly skilled men there is a tendency to remain in work for long periods, in some cases for life, with very few breaks ”¹.

In many other ways Indian workers differ greatly from the factory workers of western countries. They are for the most part illiterate, only 5 per cent. on an average being able to read and write their own vernacular. Many and wide differences of race, religion, language, caste and custom are to be found even in the

¹ R. N. GILCHRIST : *Wages and Profit Sharing*, p. 249. University of Calcutta, 1924.

same factory, and still more so when the working population is regarded as a whole.

On the other hand, in two respects Indian workers are in a stronger position than workers in other countries. For one thing, they are not forced to rely entirely on industrial employment, but can, at a pinch, return to their families on the land and there find subsistence of a sort. For another, the power of cohesion made possible by the caste system proves on occasions an extraordinarily strong factor in holding the workers together.

The organisation of employers in India is fairly well advanced, but more especially for general commercial purposes than for the purpose of dealing with trade unions and with labour questions generally. The organisation of workers is still in its initial stages and no definite information exists as to membership. The delegates of the British Trade Union Congress who visited India in 1927 estimated the membership of Indian trade unions at 200,000. A number of attempts to co-ordinate trade unionism have been made, but, except among railway and post office workers, have not yet met with great success. The All-India Trade Union Congress, founded in 1920, has not so far secured the support of more than a very modest number of unions. At the 1929 meeting of the Congress the control of the executive passed into the hands of Communist leaders, whereupon the more moderate unions seceded and formed the All-India Trade Union Federation. Speaking generally, the whole situation among workers in India is in a state of flux, out of which stable unions may be expected to crystallise in course of time¹.

The need for conciliation and arbitration machinery was first felt with any intensity during the years immediately following the world war. In response to this need committees were set up during 1921 both in Bengal and in Bombay to consider what measures should be taken to cope with the general unrest manifest throughout organised industry in India.

During the last six months of 1920 and the first quarter of 1921 there were in all 137 strikes in Bengal. It is estimated that over 240,000 employees were involved and that the aggregate duration of working days lost exceeded two and a half million. Previous to 1920 there had been a certain amount of industrial unrest in Bengal as in other parts of India, but strikes had not been resorted to on anything like such a large scale.

¹ Cf. *Freedom of Association*, Vol. V, pp. 329 et seq.

At a meeting of the Bengal Legislative Council held on 4 March 1921 a resolution was unanimously adopted recommending that a Committee be formed to enquire into the cause of recent strikes in Bengal and to advise what remedial measures should be taken. The conclusions reached by this Committee were set out in the *Report of the Committee on Industrial Unrest in Bengal, 1921*. On 29 August of the same year a resolution embodying the findings of this Committee was issued by the Government of Bengal.

This Committee found that the industrial unrest prevailing was attributable to general rather than specific causes and reached the conclusion that "many of the strikes which have occurred during the last nine months could have been prevented or could have been settled more speedily if a more cordial spirit of co-operation had prevailed and if some machinery had existed for bringing parties together immediately the difference occurred and before it had time to develop into a serious dispute".

The proposals put forward by the Committee were, first of all, that works committees containing representatives of both employers and employed should be set up in appropriate industrial establishments; the objects, constitution, etc., of these committees to be similar to those proposed by the Whitley Committee in Great Britain. It was not suggested that such committees should be created simultaneously in all industrial concerns in Bengal, such a step being held to be neither possible nor desirable; but the Committee considered that the experiment should first be tried in a number of selected establishments. Further development along the lines of district and national councils might be accomplished later if experience showed the need for such expansion and co-ordination.

In addition, the Committee was in favour of the setting up of voluntary conciliation boards to which disputes occurring in public utility undertakings should be referred. A possible future extension of the functions of such boards so as to include disputes occurring in private enterprises was anticipated.

The Committee held that the machinery requisite for the formation of conciliation boards of the type suggested must be such that it could be brought into operation without necessitating the direct intervention of the Government. With this end in view it was suggested that a panel should be formed consisting of about 20 members, including a due proportion of all classes of the community, both European and Indian, and among their number representatives of both capital and labour. With the appointment

of this panel the Government's functions should cease and even in the choice of the members of the panel it should as far as possible secure the assent of both parties.

As a result of the Committee's report, the resolution already referred to was issued by the Bengal Government making provision for such a panel of conciliators. This panel, however, was never used. The proposal for the establishment of works committees was adopted by some few industrial enterprises, but in July 1924 only one such committee was known to be in existence in Bengal which could be said to have attained any considerable measure of success.

In Bombay, as in Bengal, the period following the termination of the world war was marked by extraordinary industrial unrest. The Government of Bombay at the opening of the Legislative Council on 18 February 1920, referring to the general strike then in progress in the Bombay textile industry, stated that "it would appear that in view of present and past experience in similar disputes it is necessary for the Government to provide some machinery which has for its object, by investigation of the causes of industrial disputes such as this, the prevention of interruption of work which has so disastrous an effect on the welfare of the city and of the community, or which will at any rate bring such disputes to an early conclusion".

On 30 July 1921 the Bombay Legislative Council passed a resolution recommending the Governor in Council to appoint a Committee "to consider and report on the practicability or otherwise of creating machinery for the prevention and early settlement of labour disputes". As a result a Committee was appointed in November 1921. This Committee issued a report in April 1922 and a Bill providing for enquiry into and settlement of trade disputes was published in the *Bombay Government Gazette* of 30 May 1924. This Bill, however, was shelved at the request of the Central Indian Government, which was considering an All-India Bill for the investigation and settlement of labour disputes.

The system of conciliation and arbitration proposed in the Bombay Bill provided for enquiry into and settlement of trade disputes based on the two principles of preliminary enquiry and non-compulsory conciliation and arbitration. It provided for a court of enquiry to consist of a chairman and such number of members as the Governor in Council saw fit to appoint. Where the Governor was satisfied that a trade dispute existed or was to

be apprehended he might refer any matters relevant to this dispute to such a court, which should thereupon enquire into the causes and circumstances of the dispute in question and submit a report to the Governor. The Governor in Council could publish, as he saw fit, any information obtained or conclusions arrived at by the court. In addition, where a trade dispute existed or was apprehended the Governor in Council might take such steps as seemed expedient for enabling the parties to the dispute to meet together with a view to its amicable settlement. If both parties consented, he might furthermore refer any disputes for settlement to the arbitration of one or more persons appointed by him, or to a board of arbitration with representatives of both employers and workpeople, together with an independent chairman ; such persons to be drawn from panels previously constituted.

The Trade Disputes Act, finally adopted in 1929, is along lines substantially similar to those laid down in the Bombay Bill.

§ 2. — The System in Force

The Trade Disputes Act of 1929¹ set up for the first time a system of conciliation and arbitration for the whole of British India. It is essentially an experimental measure and remains in force for a period of five years only. It provides that on the initiative of the local government, or, in certain cases, the Governor-General in Council, or on the application of both parties to a dispute, a court of enquiry or a board of conciliation may be set up. A court of enquiry consists of one or more independent persons appointed by the local government or the Governor-General in Council, as the case may be. A board of conciliation may consist of an independent person, or of an independent person acting as chairman, together with two or four other persons who may be independent or may be representative, in equal numbers, of the parties at issue. The duty of a board of conciliation is to endeavour to bring about a settlement of the trade dispute on account of which it is appointed, and for this purpose it is given the power of enforcing the attendance of any person and examining him on oath, of compelling the production of documents and of material objects, and of issuing commissions for the examination of witnesses. Subject to such conditions and restrictions as may be prescribed by the local government or

the Governor-General in Council, any party to a dispute under enquiry or investigation by a court or board shall be entitled to be represented by a legal practitioner.

The report, or reports, of a court of enquiry or board of conciliation are to be published by the authority appointing the court or board, with necessary safeguards as to confidential matters. It is laid down that the recommendation of a board of conciliation shall "state in plain language what in the opinion of the board ought and ought not to be done by the respective parties concerned".

The second portion of the Act deals with strikes and lock-outs in public utility services and with illegal strikes and lock-outs. It provides that any person employed in a public utility service who goes on strike in breach of contract without having given, within one month before so striking, not less than fourteen days' previous notice in writing of the intention to strike — or, having given such notice, goes on strike before the period has elapsed — is punishable with imprisonment, which may extend to one month, or with a fine, which may extend to 50 rupees, or with both. A similar provision is made as regards lock-outs, with penalties of one month's imprisonment, or a fine of 1,000 rupees, or both. A public utility service is defined as meaning any railway service which the Governor-General in Council declares to be a public utility service for the purposes of this Act, any postal, telegraph or telephone service, any industry, business or undertaking which supplies light or water to the public, or any system of public conservancy or sanitation.

The provision concerning illegal strikes and lock-outs gives the following definition as to what constitutes an illegal strike or lock-out, namely : one which (a) has any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out are engaged ; and (b) is designed or calculated to inflict severe, general and prolonged hardship on the community and thereby to compel the Government to take or abstain from taking any particular course of action. The penalty here is imprisonment, which may extend to three months, or a fine, which may extend to 200 rupees, or both. Protection is provided for in the case of persons refusing to take part in an illegal strike or lock-out, and arrangements for reinstatement in their trade union or for compensation are made ¹.

¹ Cf. *Freedom of Association*. Vol. V : India. Cf. also Vol. II : Great Britain, *Trade Disputes and Trade Unions Act, 1927, Section I.*

§ 3. — Results and Opinions

The following table shows the number of strikes and lock-outs in British India during the period 1921-1931, together with the number of workpeople involved and the number of working days lost :

Year	Number of strikes and lock-outs	Number of workpeople involved	Number of days lost
1921	394	511,000	6,628,207
1922	284	435,434	3,972,727
1923	211	288,171	4,821,028
1924	133	312,462	8,730,918
1925	134	270,423	12,578,129
1926	128	186,811	1,097,478
1927	129	131,655	2,019,970
1928	203	506,851	31,647,404
1929	141	532,016	12,165,691
1930	148	196,301	2,261,731
1931	166	203,008	2,408,123

Of the stoppages of work that took place from 1921 to 1928, over 50 per cent. concerned questions of pay and bonus, some 20 per cent. questions of personnel — demands for dismissal and demands for reinstatement of workers — and some 20 per cent. “other causes”. In about 15 per cent. of the cases the workers were successful in enforcing their claims and in rather more than 15 per cent. were partially successful. In over 60 per cent. of the cases the stoppage of work was a complete failure from the workers’ point of view.

The Trade Disputes Act, 1929, has not yet been in force for a sufficient period of time to permit of a judgment as to its general efficacy. Previous to the adoption of this measure the Government of India obtained opinions from both employers’ and workers’ organisations on the draft Bill. Most of the employers’ associations declared in favour of the broad principles of the measure while at the same time criticising certain details. There was, however, a certain amount of opposition to any legislation on the question, as, for instance, that coming from the Ahmedabad Millowners’ Association and the Associated Chambers of Commerce of India and Ceylon, which were not in favour of the Bill owing to the lack of organisation of labour.

The difficulties arising from the lack of organisation were referred to again by employers in a note issued by the Bengal National Chamber of Commerce to the Royal Commission of Labour which carried on investigations in India during 1929-1930. The Chamber pointed out that strikes have become a regular feature of the industrial life of the country, a disturbing element in these strikes

being that they frequently start before any definite grievance has been put forward or any serious effort made to find a solution by negotiation. This is attributed to the absence of well-organised trade unions. The Chamber of Commerce states that it is impossible to overrate the importance of having unions of labourers for all industries, thus making it possible for employers to understand the grievances of their employees and to deal with organised and intelligent unions rather than with a body of disaffected individuals.

So far as can be judged, the workers' organisations on the whole were not opposed to the first part of the Trade Disputes Act ; but while agreeing with the provision for courts of enquiry and boards of conciliation, they were strongly antagonistic to the provisions dealing with stoppages of work in public utilities and with the provisions relating to illegal strikes.

The fact that the Trade Disputes Act is an experimental measure remaining in force for five years only should make possible the creation of an effective system of conciliation and arbitration as a result of the experience to be gained during the next few years.

§ 4. — Summary

Industrial unrest on a large scale is a comparatively recent phenomenon in India and is attended by many special features, of which the immature organisation of trade unions is one of the chief. The system of conciliation and arbitration is at present in process of evolution, the Trade Disputes Act of 1929 being essentially a tentative measure. This Act makes provision for enquiry and non-compulsory conciliation, requires notice to be given of any strike or lock-out in public utility services and forbids stoppages of work directed against the community. On the whole the machinery of enquiry and conciliation provided would appear to be acceptable to both employers and workers, but it is too early as yet to judge of its efficacy. The provisions relating to stoppages of work in public utilities, and still more the prohibition of strikes and lock-outs against the community, are opposed by the trade unions.

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CHINA

§ 1. — Introduction

Social legislation in China dates back only to the foundation of the Chinese Republic, and legislation on conciliation and arbitration is one of its most recent offshoots. The need for machinery of this kind did not become urgent until after the Revolution of 1926, when the movement in favour of strikes grew to unaccustomed proportions in the chief industrial centres of the country: Shanghai, Wuhan (Hankow), Canton and Nanking¹. On 16 August 1926 the Nationalist Government in Canton issued the first regulations on the settlement of labour disputes, which were concerned with the establishment of an arbitration board and with the procedure to be adopted. These regulations provided that when employers and workers were unable to settle a dispute concerning conditions of employment, either party might request the Department of Agriculture, Industry and Labour to set up an arbitration board consisting of a Government representative and two representatives of each party to the dispute, for the purpose of investigating the economic situation of the employers and workers concerned, discovering the causes of the dispute and proposing ways of settlement. On the basis of its findings the board had to deliver an arbitration award, from which an appeal lay with the Government, if either party considered the decision to be against its interests.

These provisions were to have been applied to all the provinces, but remained a dead letter on account of the disturbances caused by the Revolution.

During the period that followed, regulations concerning the settlement of disputes were, as a result of the political troubles, for the most part issued locally, as circumstances demanded, by municipal or provincial authorities. Thus, in January 1927, the Kwantung Provincial Government issued provisional regulations

¹ Cf. *Freedom of Association*, Vol. V, pp. 353 et seq.

respecting the settlement of disputes between shopkeepers and their employees, which were renewed in June of the same year, and the Central Political Council of Canton, on 25 March 1927, also established machinery for the settlement of such disputes. But these provisions were merely intended to be transitional and were not therefore of great importance.

Of more importance were the attempts to establish conciliation and arbitration machinery in the industrial districts of Wuhan and Shanghai.

In Wuhan, which includes the three towns of Hankow, Wuchang and Hanjang, a provisional board for the settlement of disputes between employers and workers was set up in December 1926. At the same time the Political Council issued an Order entrusting the board, which was composed exclusively of representatives of the parties, with the settlement of all disputes between employers and workers in the Province (Hupeh). According to this Order, if the parties failed to agree, the board, on request, called a meeting of all its members and after a thorough investigation and discussion of the question at issue delivered an award that was binding on both parties.

More detailed rules were laid down in the Provisional Arbitration Order promulgated by the Wuhan Local Government in 1928, which instructed the Social Department on request to convene an arbitration board in case of a dispute between employers and workers or trade unions. The board was to be composed of seven persons: a representative of the Social Department, two representatives of each of the parties (who might be designated by the Social Department if the parties failed to appoint representatives) and two impartial members chosen by the others. The chair was taken by the representative of the Department.

The Order regulates in detail the procedure for the investigation of the dispute and the issue of the arbitration award. An appeal from the board's decision lay with the local Government. In this case the Government had to appoint a second board, under the chairmanship of a representative of the Wuhan administration instead of a representative of the Social Department. The decision of this board was final and binding on the parties. The award had to be put into effect within three days.

The immediate precursors of the Order of the National Government on the settlement of labour disputes, in force to-day, were the regulations on conciliation and arbitration issued by the local Government of Shanghai in 1927. They covered all undertakings,

both in the Chinese and in the international quarters of the town. In this case also the settlement of disputes was entrusted to a board consisting of thirteen (or, according to the amended regulations, eleven) members. Of these, five represented the employers concerned, five the workers' unions, and three the Government; one of the Government representatives had to be appointed by the district Kuomintang¹ and one had to be the chairman. The board was convened by the local authorities at the request of either party, for the purpose of questioning the parties, investigating the question at issue and delivering its award.

Should the parties fail to accept the board's award, they might appeal to the local Government. The negotiations were then renewed at the instance of the authorities and according to their directions, and the initial decision was either confirmed or modified. The second award was binding on the parties and was enforced according to the instructions of the Government. No penalties were imposed, however, for contravention of the arbitration decision.

Similar regulations were issued in some of the other provinces, so that towards the end of 1927 provisions for the settlement of disputes existed in the most important industrial districts. Although these had been enacted locally, they were all based on the same general principles and provided for the establishment of a joint arbitration board under the chairmanship of a Government representative, which, at the request of the employers or workers concerned in the dispute, could deliver an arbitration award. An appeal from this award lay with the public authorities, but the final decision pronounced was binding on the parties. The political authorities were responsible for enforcing the observance of the award, but they apparently did not possess judicial means of compulsion.

These developments enabled the Nationalist Government at the beginning of 1928 to consider the question of co-ordinating the different provisions in force with a better prospect of success than in 1926, and to create conciliation and arbitration machinery for the whole of the country. On 9 June 1928 a first Act was promulgated², which was to remain in force for a year but might be prolonged by Order. This Act was amended on some important points and re-enacted on 17 March 1930³. It forms the basis of

¹ I.e. the Nationalist Party.

² *Legislative Series*, 1928, Chin. 1.

³ *Legislative Series*, 1930, Chin. 1.

the existing conciliation and arbitration machinery in China and replaces all previous local or general provisions. Provincial Governments and municipalities not subject to the provincial authorities are empowered to issue regulations for the application of the Act, subject to the approval of the Central Government.

§ 2. — The System in Force

GENERAL PRINCIPLES

The Act concerning the settlement of labour disputes applies to disputes between employers' and workers' organisations or groups consisting of fifteen or more workers. The disputes may arise out of the alteration or the application of contracts of employment, the term "alteration" obviously also including the conclusion of fresh contracts of employment. It may further be concluded from the text that the term "contract of employment" includes both individual and collective agreements.

An important characteristic of the Act is that it establishes separate procedures for conciliation and for arbitration and provides for the creation of two bodies : the conciliation board and the arbitration board.

The present Act does not establish compulsory mediation, in the sense that there is no compulsion to resort to conciliation or arbitration and that the arbitral decision is not binding. This constitutes the most important difference between the present and the previous Act. Conciliation proceedings may still be initiated by the authorities, but previous to 1930, if conciliation failed, it was compulsory to refer to the arbitration board any disputes in undertakings manufacturing munitions and armaments directly under the control of the military authorities, public utility undertakings for the supply of water, electricity and gas, and postal, telegraph, telephone, railway, tramway, shipping and motor transport public utility undertakings. Again, even in the case of disputes arising in ordinary undertakings, the administrative authorities could order arbitration *ex officio* in cases where the dispute was sufficiently serious and had lasted more than a month. Under the present Act disputes may be referred to the arbitration board only at the request of one of the parties.

Further, like the different regulations previously enacted, section 7 of the 1928 Act made the award of the arbitration board

binding upon the parties. Section 5 of the new Act, on the contrary, merely stipulates that the award has the force of a contract between the parties, unless either of them lodges an objection within five days of receiving notification of the award.

THE CONCILIATION AND ARBITRATION AUTHORITIES

The Conciliation Authority

The settlement of disputes is undertaken by the conciliation boards, which are composed of five or seven members. Two of these are appointed by each party and one or three are representatives of the administrative authority. If the dispute is confined to a municipality, the administrative authority is the municipality and if it affects an entire district, the district authority.

The competent authority in disputes extending over several districts within a province is the provincial Government, and, in those extending beyond a single province, the Ministry of Industry, Commerce and Labour.

When the administrative authority convenes a conciliation board, the parties must appoint their representatives within three days of the receipt of the official notification. If they fail to do so, the administrative authority may appoint the representatives *ex officio*.

The Government representative acts as chairman. The board is convened as soon as the members of the board have been appointed. If they fail to attend after having been convened, no further steps are taken and the attempt at conciliation is deemed to have failed.

The Arbitration Authority

The body responsible for arbitration is the arbitration board. It is composed of five members, one of whom represents the provincial, district or municipal authority, one the Kuomintang of the province, district or municipality and one the local law court, while the remaining two are a workers' representative and an employers' representative who are not directly concerned in the dispute.

The last two representatives are appointed by the administrative authority from lists drawn up each year at the request of the authorities by the employers' and workers' organisations within their areas. The lists must contain from fifteen to thirty names, be approved by the authorities and forwarded to the Ministry of Industry, Commerce and Labour.

As in the case of the conciliation boards, if the dispute extends beyond the boundaries of a single province, the Government representatives are appointed by the Ministry, the representatives of the Kuomintang by the central committee of the Party and the employers' and workers' representatives from lists of names supplied by the provinces or municipalities affected by the dispute.

The Act states explicitly that the members of the conciliation committee may not form part of the arbitration committee for one and the same dispute.

The arbitration committee is called in by the interested administrative authority. The representative of this authority is the chairman of the committee.

CONCILIATION AND ARBITRATION PROCEDURE

Conciliation Procedure

As already mentioned, conciliation proceedings may be initiated at the request of the parties or by the administrative authority. If conciliation is ordered *ex officio* by the administrative authority, such authority must inform the parties of the grounds thereof in writing. Proceedings may also be initiated at the request of only one of the parties, which must apply in writing to the administrative authority for this purpose and give the name and address of the parties, the number of workers involved in the dispute and the essential points at issue.

Upon receipt of the application the administrative authority convenes the conciliation board, which must begin to investigate the case not more than two days after being convened. The Act prescribes that its investigations must bear upon the subject of the dispute, the written statements submitted by the parties and other documents, the position of the parties to the dispute and all other facts needing examination.

The duration of the investigations is not to exceed seven days, except on special grounds. If necessary the board may make further enquiries, invite witnesses or other persons concerned in the dispute to furnish information in writing or orally, or make investigations on its own account in the undertakings involved in the dispute. The witnesses are required to appear and make true statements under penalty of a fine not exceeding 100 dollars. The board may not divulge any secrets which it may learn during an enquiry in the undertakings concerned, under penalty of the same fine. The owners of undertakings on their part are liable to

a fine if they refuse to furnish information or if they give untruthful replies.

If it appears likely that agreement will be reached on the basis of a conciliation proposal, the board, on the conclusion of the investigations and enquiries, must make such a proposal within two days, except in special circumstances or where the parties are of opinion that the time limit should be extended. This decision must be stated in writing and, if accepted by the parties, is signed by them and has the force of a contract or, if one of the parties is a trade union, a collective agreement.

Contrary to the previous legislation, the present Act provides no penalties for a contravention of the decision of a conciliation board.

The conciliation board must inform the administrative authority in writing of the result of the negotiations. There seems to be no doubt that the parties may at any time during the proceedings arrive at a mutual agreement, in which case the proceedings are terminated.

Arbitration Procedure

If an attempt at conciliation fails, the dispute may be submitted for settlement to an arbitration board at the request of one or both of the parties. The 1928 Act provided that disputes involving any of the public utility undertakings already mentioned were to be referred to an arbitration board if the attempt at conciliation had proved unsuccessful. Mention has also been made of another case in which the administrative authority could, under the terms of the earlier Act, refer a dispute to the arbitration board *ex officio*. Under the present Act recourse to arbitration may be had only if conciliation has failed and at the request of one or both of the parties. Section 6 of the earlier Act provided moreover that, at the formal request of both parties, disputes might also be submitted to arbitration before an attempt at conciliation had been made. This provision has been omitted in the present Act, so that it is no longer possible to have recourse to arbitration without a previous attempt at conciliation¹. The request must be made in writing and indicate the name and address of the parties, the grounds on which the conciliation decision was rejected and the alterations desired in that decision.

¹ This is also clear from the fact that the provision respecting the procedure to be adopted when direct recourse is had to arbitration (section 32 of the 1928 Act) has likewise been omitted, even although section 29, which provides for the initiation of arbitration procedure when an attempt at conciliation has failed, has not been modified.

The rules of procedure of the arbitration boards are the same as those of the conciliation boards, and the reader is therefore referred to the account given previously ¹.

The decisions of the arbitration board are adopted by a majority of the whole of the board. The board has to draw up a statement of its decisions in writing within two days and communicate it to the parties concerned and to the competent authority for the purpose of registration.

It has already been observed on more than one occasion that the board's decisions no longer have the same force as before the passing of the amending Act. Section 7 of the Act of 9 June 1928 provided as follows :

The awards of the arbitration board shall be binding and have the force of law between the parties. The parties shall not attempt to alter them before the expiration of their legal time limit.

In addition contraventions of the Act were punishable by fines or imprisonment. The Act as amended on 17 March 1930 merely states in section 5 that :

The award of the arbitration board shall have the force of a contract between the parties, unless either of the parties makes an objection within five days of receiving it ; if one of the parties is a trade union, the award shall have the force of a collective agreement.

Thus, in contrast to the former provisions, the present Act leaves it to the parties to decide whether or not they will accept an arbitration award.

RESTRICTIONS ON THE ACTIONS OF THE PARTIES TO A DISPUTE

It was only a corollary to the system of compulsory arbitration established by the earlier Act, for public utility undertakings to prohibit and punish a resort to any form of industrial strife in these undertakings. As this system has now been abolished, the provision in question has been omitted. Employers are, however, still prohibited from engaging in a lock-out or dismissing workers, and workers from engaging in a strike, during conciliation and arbitration proceedings. Further, the present Act, like the previous measure, comprises a general provision prohibiting workers and workers' organisations from closing shops or factories, removing or damaging the goods and equipment of shops or

¹ Cf. p. 667.

factories and compelling other workers to strike. If the parties are guilty of a contravention of these provisions, the administrative authorities or the conciliation or arbitration boards may take the necessary measures to put an end to such actions ; in other words, they are obviously empowered to take police action to enforce the observance of the provisions concerned. Contraventions of such measures, in so far as they are not offences against the ordinary criminal laws, are punishable by a fine not exceeding 200 dollars. The authorities competent to punish offences of this character are the ordinary law courts, which must give sentence within twenty days from notification of the case, unless the circumstances are exceptional.

§ 3. — Summary

The Chinese Act for the settlement of disputes has been promulgated too recently to make it possible to form an opinion on its working, especially as no statistics are available to show, either directly or indirectly, what is the practical value to-day of the conciliation and arbitration machinery set up. But if the Act is considered in conjunction with the Trade Union Act¹ and the Factories Act², also promulgated by the Nationalist Government, it will be clear that a genuine attempt has been made to pave the way for the peaceful social development of the country.

The fact that the compulsory system of 1928 and previous years was abandoned in 1930 may perhaps be interpreted as the outcome of the Government's efforts in this direction or at any rate as a proof of their confidence in the success of their social policy.

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¹ *Legislative Series*, 1929, Chin. 1.

² *Ibid.*, 1929, Chin. 2.

JAPAN

§ 1. — Economic Background and Development

Japan is an island Empire, consisting of five principal islands, a number of smaller islands, the peninsula of Chosen (Korea), and the southern half of the island Karafuto (Sakhalin). The area of Japan proper is 152,357 square miles, and of the total Empire 265,129 square miles. The 1925 census showed that the population of Japan proper was approximately sixty millions, and of the total Empire 83½ millions. By 1929 the population of Japan proper had increased to approximately 63 millions.

Japan is predominantly an agricultural country, but mining and manufacture are of great and increasing importance. At the end of June 1929 approximately 2,091,000 workers were employed in factories, slightly less than 50 per cent. being women. Some 248,000 workers were employed in mines, about 200,000 of them in collieries ¹.

The organisation of employers and workers has been proceeding rapidly during the last few years, but has not yet taken what may be looked upon as a definitive form. At the end of June 1930 there were 650 workers' trade unions with a total membership exceeding 342,000 ² as compared with some 300 trade unions and rather more than 100,000 membership in 1921 ³.

In considering the whole question of industrial relations in Japan it is necessary to bear in mind the fact that until comparatively recently a feudalistic order of society prevailed. The effect of this has been to secure in some instances a more cordial and personal relationship between employers and employees than is ordinarily found in other industrial countries. A number of instances where employees have voluntarily asked for a reduction in wages

¹ Cf. *Rodo Jiho* (Labour Gazette) Sept. 1930, supplement.

² *Ibid.*, p. 21.

³ For details of the position of employers' and workers' organisations in Japan, cf. *Freedom of Association*, Vol. V, pp. 401 et seq.

or an increase in hours of work have been recorded. Similarly, after a strike an employer has been known, in numerous cases, to pay the strike expenses of the workers. This family spirit has unquestionably weakened during recent years, but nevertheless still exercises some influence upon the industrial situation ¹.

The first record of a strike in Japan dates back only as far as 1893. For a number of years after that stoppages of work were infrequent and the rigorous application of the Police Act, promulgated in 1900, made strikes exceedingly difficult. Such few stoppages of work as occurred tended to degenerate into riots, particularly during the period 1907-1913. The peculiar industrial and sociological conditions of the world war, however, brought about an upheaval in the labour world. Stoppages of work increased approximately tenfold, rising to a maximum of 497 cases with 63,137 participants in 1919.

The growth of industrial unrest thus manifested caused public attention to be turned to the problem and, although from 1920 onwards the number of strikes decreased somewhat as compared with the high point previously reached, it had become evident that measures for the conciliation and arbitration of industrial disputes were necessary. As early as 1923 the Bureau of Social Affairs of the Department of the Interior had drafted a Bill on this question, which was held up for some time for necessary examination. In 1924 the Tenancy Disputes Conciliation Act came into force which, while not dealing with industrial disputes, nevertheless introduced the principle of conciliation ². The success of this measure encouraged the extension of the method to industrial questions and in 1926 three important steps were taken: an Act respecting conciliation in labour disputes was adopted ³; the restrictive clauses of the Police Act were repealed; and an Imperial Ordinance (No. 101, dated 11 May 1926) was promulgated empowering the Bureau of Social Affairs to deal with matters relating to the conciliation of labour disputes.

¹ Cf. e.g. Shuichi HARADA: *Labour Conditions in Japan*, pp. 226 et seq.

² Cf. "A New Method of Tenancy Disputes Adjustment in Japan", in *International Labour Review*, Vol. XI, No. 3, March 1925.

³ Cf. *Legislative Series*, 1926, Jap. 3.

§ 2. — The System in Force

The Act respecting conciliation in labour disputes of 8 April 1926 makes provision for the setting up of *ad hoc* conciliation boards both for disputes in public utility services and for disputes in other industries.

Upon application of any of the parties concerned in a dispute in certain public utility services¹ or on the initiative of the administrative authority a conciliation board may be constituted. In undertakings other than these the request of both of the parties concerned is necessary before such a board can be set up. The conciliation board consists of nine members, of whom six are selected by the parties to the dispute (each party selecting an equal number), the remaining three being chosen by these members from among persons who have no direct interest in the dispute. In the event of any failure to appoint, the administrative authority makes the necessary selection. For the purposes of this Act the administrative authority is ordinarily the Prefectural Governor (in Tokyo the captain of the Metropolitan Police Board), but the Minister of the Interior may appoint some other administrative authority and in the case of a dispute involving seamen the Minister of Communications and the head of the Communications Office take the place of the Minister of the Interior and the Prefectural Governor respectively.

The conciliation board, once it has been formed, proceeds to elect a chairman and vice-chairman. In the event of no one person having a majority, lots are drawn for the post. The decisions of the board are adopted by simple majority, the chairman having a casting vote.

The conciliation board appointed to deal with the dispute

¹ (i) Undertakings for public transport by railway, tramway or vessels propelled by steam, electricity or other motive power ;

(ii) Postal, telegraph or telephone services for public use ;

(iii) Undertakings for the supply to the public of water, electricity or gas ;

(iv) Undertakings to supply electricity to the undertakings enumerated under (i) (iii) to, the cessation of which would seriously impede the operation of the said undertakings.

(v) Other undertakings directly connected with the daily life of the public, which shall be specified by Imperial Ordinance ;

(vi) Undertakings for the manufacture or repair of munitions and warships under the direct management of the Army or the Navy, which shall be specified by Imperial Ordinance.

makes the necessary investigations and enquiries and puts forward proposals for a settlement. Unless prolonged by the unanimous consent of the members selected by the parties concerned, the conciliation procedure must be completed within fifteen days of its opening. The board may demand the attendance of the parties concerned or their representatives or other persons, may call for explanatory documents and may enter the workplaces or other places connected with the dispute, watch the work or the operation of equipment and question the persons concerned except in cases where secrecy is required for military reasons. Discussions of the conciliation board are not public, but the administrative authority, with the consent of the conciliation board, may delegate a competent official to attend meetings of the board.

Upon the termination of the conciliation procedure the board renders account to the administrative authority. In the event of failure to arrive at a settlement a report is made containing the draft proposal for the settlement of the dispute, as also the minority opinion. The administrative authority publishes the gist of this report, unless the dispute has been settled and the members selected by one of the parties concerned are opposed to such publication.

COMPULSORY CLAUSES AND PENALTIES

In the event of a conciliation board being set up to deal with a dispute in any of the public utility services enumerated above, it is forbidden to persons other than employers and workers who are actually connected with the dispute, and officers or clerks of the employers' or workers' organisations to which they belong, to instigate or incite either the employers or the workers connected with the dispute to stop or otherwise impede the progress of work or the continuation of employment until the conclusion of the conciliation procedure.

A number of penalties are laid down in the Act. Anybody who without reasonable cause fails to attend for purposes of explanation or to submit the explanatory documents is liable to a fine not exceeding 50 yen. A fine not exceeding 200 yen may be imposed upon any person who gives a false explanation to the conciliation board or who without reasonable cause refuses to allow entrance to or inspection of working places, etc. Members or ex-members of a conciliation board who divulge secrets learnt in the course of their duties are likewise liable to a fine not exceeding

200 yen. A person contravening the provision dealing with instigation or incitement to strike or lock-out during the conciliation procedure of a dispute concerning a public utility service may be punished either by a fine not exceeding 200 yen or by imprisonment not exceeding three months.

The provisions of this Act have been given in some detail since they constitute the system legally in force. In point of fact, however, this machinery has only once been set in operation during all the years that it has been in existence. In some ways of greater immediate importance than the passage of the Conciliation Act was the repeal of those sections of the Police Act which had been held to inhibit liberty of action on the part of workers during labour disputes¹, and still more the adoption of the Imperial Ordinance (No. 111, dated 11 May 1926) immediately preceding the promulgation of the Conciliation Act.

This Ordinance set up administrative machinery for dealing with labour questions and in practice has been used to a much greater extent than the machinery provided by the Conciliation Act. The former labour section of the Bureau of Social Affairs was divided into two sections, one of which — the Labour Service Section — took over the conciliation of labour disputes. It has a number of conciliation officers (*chotei kan*) and assistant conciliation officers (*chotei-kan-ho*) attached to it for the purpose of dealing with actual or potential stoppages of work. Similar officers are appointed in practically all urban and local prefectures. In order to give preparatory training to these conciliators the Bureau of Social Affairs organised a training course in 1926 to which conciliation officers, assistant officers, chiefs of the Labour Service and so forth from all prefectures of Japan were summoned. Since then conferences of these officers have been convoked from time to time by the Bureau in order to bring about uniformity in the administration of the law and to promote efficiency.

§ 3. — Results and Opinions

As already noted, strikes and lock-outs in Japan were relatively rare previous to the world war; rose to a peak during the war period and the year following; and, although declining somewhat

¹ *Freedom of Association*, Vol. V, pp. 435 et seq.

thereafter, remained at a high level with a pronounced upward trend. Since statistics on stoppages of work in Japan are not so readily available to the general reader as they are in other countries, it will be useful to set them out in some detail.

STRIKES, CA' CANNIES AND LOCKS-OUTS, 1897-1931

Year	No. of cases	No. of workers affected	No. of days lost
1897	32	3,510	—
1898	43	6,293	—
1899	15	4,284	—
1900	11	2,316	—
1901	18	1,948	—
1902	8	1,849	—
1903	9	1,359	—
1904	6	879	—
1905	19	5,013	—
1906	13	2,037	—
1907	57	9,855	—
1908	13	823	—
1909	11	310	—
1910	10	2,934	—
1911	22	2,100	—
1912	49	5,736	—
1913	47	5,242	—
1914	50	7,904	—
1915	64	7,852	—
1916	108	8,413	—
1917	398	57,309	—
1918	417	66,457	—
1919	497	63,137	—
1920	282	36,371	—
1921	246	58,225	—
1922	250	41,503	—
1923	270	36,259	421,873
1924	333	54,526	638,363
1925	293	40,742	361,225
1926	495	67,234	722,292
1927	383	46,672	1,177,352
1928	393	43,337	583,595
1929	571	77,281	570,861
1930	906	81,329	1,085,074
1931	998	64,536	980,054

CAUSES OF STRIKES, CA' CANNIES AND LOCK-OUTS

Causes	1923		1924		1925		1926		1927		1928		1929		1930		1931	
	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.
1. Demands for higher wages	118	44	134	40	100	34	226	46	94	24	109	27	91	16	80	9	167	17
2. Opposition to wage act	29	11	30	9	41	14	47	9	60	16	58	15	129	22	291	32	217	22
3. Questions regarding methods of wage calculation	—	—	32	10	44	15	58	12	36	9	19	5	45	8	39	4	55	6
4. Demand for shorter hours	20	7	14	4	9	3	5	1	8	2	9	2	10	2	8	1	18	2
5. Demand for rest days	—	—	—	—	—	—	—	—	1	—	1	—	1	—	1	—	—	—
6. Opposition to the change of workers' regulations	—	—	13	4	5	2	24	5	2	—	4	1	20	4	11	1	10	1
7. Question of workers' committees	1	—	1	—	—	—	—	—	—	—	—	—	—	—	—	—	—	—
8. Question of welfare work	17	6	8	2	10	3	8	2	7	2	6	1	3	—	4	1	6	1
9. Question of freedom of association	4	2	4	1	4	1	6	1	12	3	9	2	6	1	10	1	12	1
10. Demand for discharge allowance	17	6	28	8	11	4	32	6	28	7	40	10	64	11	126	14	81	8
11. Demand for restitution of discharged workers	—	—	—	—	—	—	4	1	53	14	30	8	82	14	—	—	—	—
12. Demand to save the victims of strikes	18	7	15	4	16	5	30	6	37	10	25	6	26	5	12	1	25	2
13. Opposition to superintendent	46	70	54	18	53	19	55	11	45	12	83	21	97	17	324	36	407	40
14. Others	270	100	333	100	293	100	495	100	383	100	397	100	576	100	906	100	998	100
Total	270	100	333	100	293	100	495	100	383	100	397	100	576	100	906	100	998	100

* In this and the ensuing tables the figures for 1928 include four stoppages of work and for 1929 five stoppages continuing from the previous year.

DEGREE OF SUCCESS OF STRIKES

Year	Total number of strikes, ca' cannies and lock-outs	Number of cases in which workers were completely successful	Proportion of stoppages of work in which workers were completely successful (per cent.)
1919	497	63	13
1920	282	39	14
1921	246	23	9
1922	250	40	16
1923	270	38	14
1924	333	66	20
1925	293	52	18
1926	495	139	28
1927	383	109	28
1928	397	95	24
1929	576	167	29
1930	906	263	—
1931	998	225	—

COMPARATIVE SIZE OF STRIKES, CA' CANNIES AND LOCK-OUTS

Year	Stoppages of 49 or less workers		Stoppages of 50 to 499 workers		Stoppages of 500 workers or more		Totals		Average per stoppage of work	
	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	No. of cases	Per cent.	Total no. of workers affected	Average per case
1921	122	50	100	45	14	5	246	100	58,225	237
1922	114	46	117	47	19	7	250	100	41,503	166
1923	150	56	100	37	20	7	270	100	36,259	134
1924	175	52	130	40	28	8	333	100	54,526	164
1925	163	55	114	39	16	6	293	100	40,742	135
1926	295	59	183	38	17	3	495	100	67,234	136
1927	229	60	144	35	20	5	383	100	46,672	122
1928	257	65	135	32	14	3	397	100	46,252	116
1929	371	64	196	32	22	4	576	100	77,444	134
1930	—	—	—	—	—	—	906	100	81,329	90
1931	—	—	—	—	—	—	998	100	64,536	65

It should be noted that the foregoing statistics include a certain number of cases of ca' canny ("working idly") together with the actual strikes and lock-outs. The following table gives details for the last three years available :

PROPORTION OF STRIKES, CA' CANNIES AND LOCK-OUTS

Year	Strikes		Ca' cannies		Lock-outs		Total	
	No. of cases	No. of workers affected	No. of cases	No. of workers affected	No. of cases	No. of workers affected	No. of cases	No. of workers affected
1927	346	43,669	17	2,194	20	809	383	46,672
1928	332	36,872	40	8,153	25	1,227	397	46,252
1929	494	60,084	54	12,145	28	5,215	576	77,444
1930	763	64,933	53	9,284	90	7,112	906	81,329
1931	864	54,515	58	5,275	76	4,746	998	64,536

Another table of considerable interest is that showing the number of cases of stoppages of work in which trade unions have participated.

Year	Number of cases where trade unions have participated	Number of cases where trade unions have not participated	Total number of stoppages of work
1922.	63	187	250
1923.	105	165	270
1924.	154	179	332
1925.	183	110	293
1926.	353	142	495
1927.	259	124	383
1928.	233	164	397
1929.	362	214	576

As will be seen, there has been a decided upward trend in the proportion of stoppages of work in which trade unions were engaged, the percentage figures for the last eight years being : 1922, 25 per cent. ; 1923, 39 per cent. ; 1924, 47 per cent. ; 1925, 62 per cent. ; 1926, 71 per cent. ; 1927, 68 per cent. ; 1928, 59 per cent. ; 1929 62 per cent.

Turning to the actual results of the conciliation machinery, there are no very specific facts to record. As stated in the preceding section, there has so far been only one case in which the machinery provided by the Act respecting conciliation in labour disputes of 1926 has been brought into operation. This particular case, however, attracted much attention and some brief account of it may not be out of place.

In the spring of 1930 a labour dispute in the Yuasa Copper Works in Osaka culminated in a general strike on 1 April 1930. Both the workers, who were affiliated to the General Federation of Japanese Trade Unions, and the employer took a firm stand and the struggle continued until about a month later, when the officials of the Osaka Urban Prefecture in charge of labour conciliation proposed a settlement in conformity with the Conciliation Act. Both parties accepted this suggestion and a Conciliation Board, composed of nine members, was set up ; three representing the employer, three the workers and three neutral persons chosen by the two parties concerned, including the Chief of the Police Board of the Osaka Urban Prefecture. This Board met five times during the week and as a result of the negotiations thus brought about the dispute was amicably settled.

This single success, while illustrating the possibilities of the system, obviously does not compensate for the failure to have recourse to the statutory means of dealing with disputes during the preceding four years.

But against the meagre results of the Conciliation Act must be set the fact that the number of stoppages of work settled by conciliation has increased considerably since the passage of this Act. In the opinion of competent observers a large part of this increase is ascribable to the moral effect of the measure and still more to the provision of conciliation agents under the Imperial Ordinance referred to above.

The following table shows the number of cases of stoppages of work settled by direct negotiations and by conciliation respectively :

EXTENT OF CONCILIATION IN STRIKES AND LOCK-OUTS

Year	Direct negotiations		Conciliation		Total
	No. of cases	Percent-age	No. of cases	Percent-age	
1922	190	76	60	24	250
1923	181	67	89	33	270
1924	201	60	132	40	333
1925	203	69	90	31	293
1926	292	59	203	41	495
1927	158	41	225	59	383
1928	221	58	159	40	397 ¹
1929	333	58	232	40	576 ¹

¹ The nature of the settlement in a certain number of cases in these years is not known.

It should be noted, perhaps, that it is not to be inferred that the official conciliators are responsible for the whole of the cases of conciliation since 1926. In a number of instances private persons have performed the office of mediator. No details are available as to the number of cases in which official conciliation officers were responsible, nor of the number of cases in which such officers intervened in disputes which did not result in a stoppage of work.

Employers' and workers' organisations generally have not expressed any very definite opinions on the question of conciliation and arbitration in Japan. On the other hand, a number of points were raised at the Conference of prefectural government officials in charge of labour conciliation held in the Bureau of Social Affairs in October 1930, which are of interest in this connection. Among the most important of these points were : the possibility of an extension of the power vested in the authorities to order the establishment of a Conciliation Board without the request of the parties concerned, notably in those cases where a dispute involves a large number of workers, when it extends for a long period of time or is likely to disturb the public peace ; the shortening of the period allowed for setting up a conciliation committee and for the proceedings of the committee from 22 days (the present amount allowed) to about 10 days ; the desirability of prohibiting further developments of a stoppage of work once conciliation proceedings have begun ; and the setting up of a regular organisation for the administration of conciliation matters and a clearer definition of the position and powers of the officials in charge of labour conciliation.

It is reported that the Bureau of Social Affairs intends to proceed at an early date with the drafting of a revision of the Conciliation Act.

§ 4. — Summary

Machinery for the conciliation and arbitration of industrial disputes in Japan is at present in what may be regarded as the formative stage. The Conciliation Act of 1926 makes provision for completely optional conciliation in ordinary disputes and for compulsory recourse to conciliation in the case of certain public utility services where the dispute appears to the authorities to demand such action. This measure has been supplemented by administrative arrangements for conciliation by specially appointed

conciliation officers. The Conciliation Act has been used only once during its existence and is likely to be revised. The conciliation officers on the other hand would appear to have been active and the conciliation of disputes involving stoppages of work has made progress during recent years.

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Among the articles appearing in these periodicals, the most recent and important is the one by Mr. K. KASEGAWA entitled "Naigai Ni Okeru Rodo Sogi No Kindaiteki Susei" (Modern Tendency of Labour Disputes in Japan and Abroad), October number of *Shakai Seisaku Jiho*, pp. 1-33.

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INTERNATIONAL LABOUR OFFICE :

International Labour Review, February 1927, pp. 257-271.

Industrial Conditions and Labour Legislation in Japan. By I. AYUSAWA. Studies and Reports, Series B, No. 16, pp. 103-105.

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APPENDIX

LIST OF LAWS IN FORCE ON 15 MAY 1932 IN THE DIFFERENT COUNTRIES OF THE WORLD CONCERNING CONCILIATION AND ARBITRATION IN COLLECTIVE DISPUTES ¹.

ARGENTINE REPUBLIC

Federal Government

Act of 8 October 1921 respecting the National Department of Labour.

Cordova

Act of 1 December 1914.

Corrientes

Act of 21 April 1926.

Mendoza

Order for administration of 9 January 1919.

Salta

Act of 13 July 1931.

Tucuman

Order of 1 May 1915.

Order of 10 December 1917.

AUSTRALIA

Commonwealth

Act to amend the Commonwealth Conciliation and Arbitration Act, 1904/27, Assented to 22 June 1928. L.S. 1928, Austral. 2².

Act to amend the Commonwealth Conciliation and Arbitration Act, 1904/28, Assented to 18 August 1930. L.S. 1930, Austral. 11.

New South Wales

An Act to establish an Industrial Commission to exercise the powers of the Court of Industrial Arbitration and the New South Wales Board of Trade and certain other powers in relation to industrial matters and monopolies ; to provide for Conciliation Committees in industry ; to amend the Industrial Arbitration Act, 1912, and certain other Acts ; and for the purposes connected therewith. Assented to 18 March 1926. L.S. 1926, Austral. 7.

An Act to amend the Constitution of the Industrial Commission ; to amend the law with respect to the declaration of living wages and the granting of preference of employment to unionists ; to amend the Industrial Arbitration Act, 1912, and certain other Acts ; and for purposes connected therewith. Assented to 9 December 1927. L.S. 1927, Austral. 7.

¹ This list does not include the legislative provisions concerning only the fixation of minimum wages. The date (15 May 1932) signifies that all legislative provisions known to the International Labour Office up to this date have been included in the list.

² L.S. = INTERNATIONAL LABOUR OFFICE : *Legislative Series*.

An Act . . . to amend the Industrial Arbitration Act, 1912, and certain other Acts; and for purposes connected therewith. Assented to 31 October 1929. L.S. 1929, Austral. 5 A.

An Act to make further provision with respect to the declaration of living wages; to amend the Industrial Arbitration Act, 1912, the Industrial Arbitration (Amendment) Act, 1926, as amended by subsequent Acts and certain other Acts; to repeal the Industrial Arbitration (Living Wage Declaration) Act, 1927, and Industrial Arbitration (Suspension of Living Wage Declaration) Act, 1929, and for purposes connected therewith. Assented to 13 December 1929. L.S. 1929, Austral. 5 B.

An Act to make further provision for regulating the hours of work in certain industries, the payment of overtime and the making, varying and amending the awards of industrial agreements; to amend the Industrial Arbitration Act, 1912, the Industrial Arbitration (Eight Hours) Amendment Act, 1930, and certain other Acts; and for purposes connected therewith. Assented to 23 December 1930. L.S. 1930, Austral. 12.

An Act to provide for the continuance of certain industrial boards; to amend the Industrial Arbitration Act, 1912, as amended by subsequent Acts; and for purposes connected therewith. Assented to 10 December 1931. L.S. 1931, Austral. 13.

Queensland

An Act to make better provision for the maintenance of peace in industry; to provide for the regulation of the conditions of industry by means of industrial conciliation and arbitration; to establish an industrial court and certain other tribunals and for certain other purposes. Assented to 23 December 1929. L.S. 1929, Austral. 6.

An Act to amend the Industrial Conciliation and Arbitration Acts, 1929/30, in certain particulars. Assented to 14 January 1932. L.S. 1932, Austral. 1.

South Australia

An Act to consolidate and amend the law relating to industrial matters and the Constitution and the working of Industrial Boards and the regulation, control, inspection and working of factories and to amend the Public Service Act, 1916, and for other purposes. Assented to 9 December 1920. L.S. 1926, Austral. 1, App. A.

An Act to amend the Industrial Code, 1920, and for other purposes. Assented to 24 December 1924. L.S. 1926, Austral. 1, App. B.

An Act to amend the Industrial Acts, 1920/24, and for other purposes. Assented to 6 January 1926. L.S. 1926, Austral. 1.

Tasmania

An Act to consolidate and amend the law relating to Wages Boards and for other purposes. Dated 24 December 1920. L.S. 1924, Austral. 1, App.

An Act to amend the Wages Board Act, 1920. Dated 13 March 1924. L.S. 1924, Austral. 1.

An Act to amend the Wages Board Act, 1920. Assented to 7 January 1929. L.S. 1929, Austral. 1.

Victoria

An Act to consolidate the law relating to the supervision and regulation of factories and shops and to other industrial matters. Assented to 12 February 1929. L.S. 1929, Austral. 13.

Western Australia

An Act of 1925 to amend the Industrial Arbitration Act, 1912. Assented to 31 December 1925. L.S. 1925, Austral. 12.

An Act to make provision in the Industrial Arbitration Act, 1912/25, for the adjustment and amendment of the basic wage during the currency thereof. Assented to 24 December 1920. L.S. 1930, Austral. 7.

AUSTRIA

An Act to amend and supplement the Industrial Code. Dated 5 February 1907. B.O., I.L.O. 1907, Vol. II, p. 189¹.

Act respecting the establishment of Conciliation Boards and concerning collective agreements. Dated 18 December 1919. L.S. 1920, Aus. 22.

Act respecting Domestic Servants' Contracts (Domestic Servants' Act.) Dated 26 February 1920. L.S. 1920, Aus. 18.

Federal Act concerning the contract of service of salaried employees in agricultural and sylvicultural undertakings. (Estate Employees' Act.) Dated 26 September 1923. L.S. 1923, Aus. 2.

Act concerning the regulation of agricultural labour in the State of Lower Austria. Dated 22 March 1921. L.S. 1921, Aus. 2.

Act of 3 March 1922 concerning the Ordinances respecting agricultural workers for Kärnten.

Act of 23 June 1923 concerning the Ordinances respecting agricultural workers for Styria.

BELGIUM

Order of 5 May 1926 to establish official Conciliation and Arbitration Committees. L.S. 1926, Bel. 5.

Royal Order to amend the Royal Order of 5 May 1926 to establish official Conciliation and Arbitration Committees. Dated 25 November 1929. L.S. 1929, Bel. 7.

BOLIVIA

Decree to regulate strikes. Dated 29 September 1920. L.S. 1920, Bol. 1.

BRAZIL

Decree No. 21,396 to establish joint conciliation boards and to provide for other measures. Dated 12 May 1932. L.S. 1932, Braz. 4.

CANADA**Dominion**

Act of 12 June 1925 to amend the Industrial Disputes Investigation Act. L.S. 1925, Can. 1.

Alberta

Act of 8 April 1926 to provide for the settlement of labour disputes. L.S. 1926, Can. 2.

Regulation of 17 September 1926 under the Labour Disputes Act.

Act of 21 March 1928 respecting the Industrial Disputes Investigation Act of Canada and labour disputes within the jurisdiction of the province.

British Columbia

Act of 11 December 1925 respecting the investigation of industrial disputes within the province. L.S. 1925, Can. 4.

Manitoba

An Act to regulate the investigation of industrial disputes within the province. Assented to 31 March 1926.

New Brunswick

Act respecting the investigation of industrial disputes within the province. Dated 25 March 1926.

¹ B.O., I.L.O. = *Bulletin of the International Labour Office (Basle)*.

Nova Scotia

Act of 7 May 1925 respecting the prevention and settlement of strikes and lock-outs and to repeal Chapter 247 Revised Statutes, 1923, "The Conciliation Act", and Chapter 248, Revised Statutes, 1923, "The Miners' Arbitration Act". L.S. 1925, Can. 3.

An Act respecting the investigation of industrial disputes within the province. Chapter 5. Passed 15 March 1926.

Ontario

An Act respecting Councils of Conciliation and Arbitration for settling industrial disputes. Assented to 7 March 1910.

An Act to aid in the prevention and settlement of industrial disputes. Assented to 29 March 1932.

An Act respecting the Ontario Municipal Board. Assented to 29 March 1932.

Quebec

An Act to amend the Quebec Trade Disputes Act. Assented to 27 April 1909.

An Act respecting investigation into industrial disputes. Assented to 27 February 1932.

Saskatchewan

An Act respecting investigation of industrial disputes within the province. Dated 28 January 1926.

CHILE

Labour Code of 13 May 1931. L.S. 1931, Chil. 1.

CHINA

Act of 9 June 1928 concerning the settlement of labour disputes published by the Government of Nankin. L.S. 1928, Chin. 1.

Amendment of 17 March 1930 of the Act as above. L.S. 1930, Chin. 1.

COLOMBIA

Act No. 21 of 1920 respecting conciliation and arbitration in collective labour disputes, supplementing Act No. 78 of 1919 respecting strikes. Dated 4 October 1920. L.S. 1920, Col. 1.

CUBA

Act of 9 June 1924 respecting Conciliation Boards. L.S. 1924, Cub. 1.

CZECHOSLOVAKIA

Act respecting mining Arbitration Courts. Dated 25 February 1920. L.S. 1920, Cz. 7.

Act No. 170 respecting mining Arbitration Courts. Dated 3 July 1924. L.S. 1924, Cz. 2.

Act concerning the Labour Courts. Dated 4 July 1931. L.S. 1931, Cz. 3.

DANZIG (Free City of)

Act concerning conciliation and arbitration. Dated 4 February 1930. L.S. 1930, Danz. 1.

Order of 4 March 1930 for the administration of the Act of 4 February 1930 respecting conciliation and arbitration.

DENMARK

Act No. 34 of 28 February 1927 to amend Act No. 526 of 21 December 1921 respecting intervention in labour disputes. L.S. 1927, Den. 1 B.

Notification No. 37 of 28 February 1927 to issue Act No. 526 of 21 December 1921 respecting intervention in labour disputes, as amended by Act No. 34 of 28 February 1927. L.S. 1927, Den. 1 C.

ECUADOR

Decree No. 31 of 29 July 1926 : Regulations concerning the General Labour Inspectorate. L.S. 1926, Ec. 1 B.

ESTONIA

Act of the Provisional Revolutionary Government of Russia. Dated 5 August 1917.

Act to regulate the hours of work and wages of agricultural workers. Dated 1 November 1921. L.S. 1921 (II), Est. 1.

FINLAND

Act of 21 March 1925 respecting conciliation in collective labour disputes. L.S. 1925, Fin. 1.

Order of 21 December 1925 respecting the number and districts of the conciliators in collective disputes (under section 1 of Act of 21 March 1925).

FRANCE

Act of 22 July 1909 authorising the Government to suspend provisionally and in special cases the application of the Act of 2 April 1889 and to suspend in the same circumstances Section 1 of the Act of 17 July 1867 concerning the commercial and maritime relations between Algeria and the Mother Country, and the institution of a Permanent Arbitration Council.

Decree containing Public Administrative Regulations for the application of the Act of 22 July 1909 a pointing a Permanent Arbitration Council, to which disputes of a collective nature between shipping companies and their crews must be submitted. Dated 19 March 1910. B.O., I.L.O., 1913, Vol. VIII, p. 171.

Decree modifying the Public Administrative Regulations of 19 March 1910 organising the Permanent Arbitration Council appointed in virtue of section 2 of the Act of 22 July 1909, in regard to disputes of a collective nature between shipping companies and their crews. Dated 7 August 1911. B.O., I.L.O., 1913, Vol. VIII, p. 177.

Order respecting the settlement of labour disputes by means of conciliation. Dated 22 December 1917. B.O., I.L.O., 1918, Vol. XIII, p. 50.

Circular (merchant shipping) respecting the settlement of labour disputes by means of conciliation. Dated 22 December 1917. B.O., I.L.O., 1918, Vol. XIII, p. 50.

Act of 21 June 1924 to codify the labour laws (Book IV of the Code of Labour and Social Welfare). L.S. 1924, Fr. 3.

Decree of 24 September 1925 to institute a Permanent Arbitration Board for the settlement of collective disputes between shipping companies and the crews employed by them. L.S. 1925, Fr. 12.

Decree of 28 January 1927 to institute an Arbitration Board for the settlement of collective disputes arising between sea-fishing undertakings and the crews employed by them. L.S. 1927, Fr. 1.

Decree of 11 March 1930 amending Article 15 of the Decree of 24 September 1925 instituting a Permanent Arbitration Board for the settlement of collective disputes between shipping companies and the crews employed by them. L.S. 1930, Fr. 2.

GERMANY

Order of the President of the Federation respecting strikes and lock-outs in undertakings which provide the population with gas, water and electricity. Dated 10 November 1920. L.S. 1920, Ger. 16.

Order of 30 October 1923 respecting conciliation. L.S. 1923, Ger. 6.

Second Order for the administration of the Order respecting conciliation of 29 December 1923.

Order of 8 December 1931 of the President of the Reich to safeguard industry and finance and to ensure peace in the land. L.S. 1931, Ger. 9.

GREAT BRITAIN

Act concerning conciliation of 1896.

An Act to provide for the establishment of an Industrial Court and Courts of Enquiry in connection with trade disputes, and to make other provision for the settlement of such disputes, and to continue for a limited period certain of the provisions of the Wages (Temporary Regulation) Act. Dated 20 November 1919. L.S. 1920, G.B. 1.

GREECE

Legislative Decree of 21 April 1926 respecting arbitration and conciliation in disputes to which salaried employees are parties. L.S. 1926, Gr. 3.

GUATEMALA

Decree No. 1434 of 30 April 1926 promulgating the Labour Act. L.S. 1926, Guat. 1.

HUNGARY

Act of 1893 for the protection of industrial and factory workers.

Order of the Royal Hungarian Council of Ministers respecting the Conciliation Committees to be set up for peaceful settlement of industrial wage disputes. Dated 3 September 1923. L.S. 1923, Hung. 5.

ICELAND

Act No. 55 of 27 June 1925 respecting conciliation in labour disputes. L.S. 1925, Ice. 2.

INDIA

Act to make provision for the investigation and settlement of trade disputes and for certain other purposes. Assented to 12 April 1929. L.S. 1929, In. 2.

IRISH FREE STATE

Act concerning conciliation of 1896.

An Act to provide for the establishment of an Industrial Court and Court of Enquiry in connection with trade disputes and to make other provision for the settlement of such disputes, and to continue for a limited period certain of the provisions of the Wages (Temporary Regulation) Act. Dated 20 November 1919. L.S. 1920, G.B. 1.

ITALY

Act No. 563 of 3 April 1926 : legal regulation of collective relations in connection with employment. L.S. 1926, It. 2.

Decree No. 1130 of 1 July 1926 issuing rules for the administration of the Act No. 563 of 3 April 1926 respecting the legal regulation of collective relations in connection with employment. L.S. 1926, It. 5 (A).

JAPAN

Act No. 57 of 8 April 1926 respecting conciliation in labour disputes. L.S. 1926, Jap. 3 (A).

Imperial Ordinance No. 196 of 23 June 1926 : Ordinance for the administration of the Act respecting conciliation in labour disputes. L.S. 1926, Jap. 3 B.

Imperial Ordinance No. 197 of 23 June 1926 respecting the date of the coming into operation of the Act respecting conciliation in labour disputes. L.S. 1926, Jap. 3 C.

LATVIA

Act of the Provisional Revolutionary Government of Russia. Dated 5 August 1917.

Order of 4 October 1927 respecting collective labour agreements. L.S. 1927, Lat. 3.

LITHUANIA

Act of 14 November 1924 respecting the Labour Investigation Department. L.S. 1924, Lith. 3.

Administrative Instructions of 25 November 1925 under the Labour Inspection Act. L.S. 1925, Lith. 2.

Memel Territory

Order of 23 December 1918 respecting collective agreements, workers' and employees' committees and the settlement of industrial disputes. B.O., I.L.O., 1918, Vol. XIII, p. 10.

Order of 9 August 1922.

Ordinance of Application of 13 September 1922.

LUXEMBURG

Act respecting the legal regulation of the contract of service of private employees. Dated 31 October 1919. L.S. 1920, Lux. 2-4.

Statutes of the staff of the Luxemburg railways. Dated 14 May 1921.

Order of 8 May 1925 relating to the institution of Works Committees in industrial establishments. L.S. 1925, Lux. 1 A.

MEXICO (United States of)

Labour Code of 8 August 1931. L.S. 1931, Mex. 1.

NETHERLANDS

Act concerning the furtherance of the peaceful settlement of disputes respecting conditions of employment and the prevention of such disputes. Dated 4 May 1923. L.S. 1923, Neth. 1.

NEW ZEALAND

Act concerning the investigation of labour disputes. Dated 3 October 1913.

Act. No. 24 of 1 October 1925 to consolidate certain enactments of the General Assembly relating to the settlement of industrial disputes. L.S. 1925, N.Z. 1.

An Act to make provision with respect to public finances and other matters. Dated 28 April 1931. L.S. 1931, N.Z. 2.

An Act to amend the Industrial Conciliation and Arbitration Act 1925. Assented to 27 April 1932. L.S. 1932, N.Z. 1.

NORWAY

Act of 5 May 1927 respecting labour disputes. L.S. 1927, Nor. 1 A.
 Act to amend the Act of 5 May 1927 respecting labour disputes. Dated 8 June 1931. L.S. 1931, Nor. 1.

PANAMA

Administrative Act of 22 August 1916.

PERU

Ordinance of 6 March 1920 amended by Decree of 27 March 1920.
 Ordinance of 9 April 1920.
 Ordinance of 14 September 1920.
 Ordinance of 18 June 1921.

POLAND

Order respecting collective agreements, workers' and employees' committees, and the settlement of industrial disputes. Dated 23 December 1918. B.O., I.L.O., 1918, Vol. XIII, p. 10.

Act concerning the authorisation of the Minister of Labour and Social Welfare to convene the special Arbitration Board to settle collective disputes between agricultural employers and employees. Dated 24 March 1923. L.S. 1923, Pol. 1.

Act of 18th July 1924 to authorise the Minister of Labour and Social Welfare to convene special Arbitration Boards for the settlement of collective disputes between employers and workers in agriculture. L.S. 1924, Pol. 4.

Order of 14 July 1927 concerning the Labour Inspectorate. L.S. 1927, Pol. 8.

Publication of 23 September 1931 concerning the promulgation of the uniform text of the law of 1 August 1919 concerning the settlement of collective disputes between employers and agricultural employees. L.S. 1931, Pol. 4.

PORTUGAL

Decree of 17 August 1912 relating to Conciliation Boards. B.O., I.L.O., 1914, Vol. IX, p. 267.

RUMANIA

Act concerning the regulation of collective labour disputes. Dated 4 September 1920. L.S. 1920, Rum. 4.

Act of 11 April 1927 to establish the Labour Inspection Service. L.S. 1927, Rum. 1.

RUSSIA

Order of 29 August 1928 of the C.E.C. and C.P.C. to approve the Regulations for dealing with labour disputes by conciliation and arbitration and judicial procedure. L.S. 1928, Russ. 1 A.

Regulations of 29 August 1928 for dealing with labour disputes by conciliation and arbitration and judicial procedure. L.S. 1928, Russ. 1 B.

Regulation No. 723 of 12 December 1928 concerning Conciliation Boards and Arbitration Courts for the settlement of industrial disputes.

SOUTH AFRICA (Union of)

Act to make provision for the prevention and settlement of disputes between employers and employees by conciliation, for the registration and regulation of trade unions and private registry offices and for other incidental purposes, No. 11 of 1924. Assented to 26 March 1924. L.S. 1924, S.A. 1.

Act to amend the Industrial Conciliation Act, 1924 No. 24. Dated 30 May 1930. L.S. 1930, S.A. 5.

SPAIN

Decree to provide that the regional labour officers or the special officers appointed by the Ministry of Labour and Social Welfare, and the mayors only in default of such officers, shall take steps, whenever they become aware of any dispute or complaint on the part of workers or employers which is liable to alter the condition of employment in force, to convene at once the representatives of the employers and workers concerned and invite them to submit the case to the competent joint committee or to any arbitrator enjoying the confidence of both parties, for the purpose of its settlement. Dated 29 May 1931. L.S. 1931, Sp. 3.

Decree respecting joint committees for railways. Dated 10 September 1931. L.S. 1931, Sp. 12.

Act of 27 November 1931 respecting the Joint Boards for industrial and agricultural work, for rural property, produce and agricultural industries. L.S. 1931, Sp. 15.

SWEDEN

Act respecting conciliation in trade disputes. Dated 28 May 1920. L.S. 1920, Swe. 6-8.

Act No. 246 respecting the Central Arbitration Board for certain trade disputes. Dated 28 May 1920. L.S. 1920, Swe. 6-8.

Act respecting special arbitrators in trade disputes. Dated 28 May 1920. L.S. 1920, Swe. 6-8.

Act of 22 June 1928 respecting the Labour Court. L.S. 1928, Swe. 3.

Act to amend section 3 of the Act No. 245 of 28 May 1920 respecting conciliation in labour disputes. Dated 12 June 1931. L.S. 1931, Swe. 4.

SWITZERLAND**Confederation**

Federal Act of 18 June 1914 relating to work in factories. B.O., I.L.O., 1914, Vol. IX, p. 269.

Aargau

Act concerning the Industrial Arbitration Courts and Conciliation Boards. Dated 4 December 1908.

Administrative Order of the Act concerning the Industrial Arbitration Courts. Dated 25 April 1910.

Order concerning the Cantonal Conciliation Board. Dated 18 June 1923.

Appenzell Rh. Ext.

Order relating to the Cantonal Conciliation Board. Dated 5 June 1920.

Appenzell Rh. Int.

Order relating to the institution of Conciliation Boards. Dated 3 June 1918/13 January 1923.

Basle (country)

Order relating to the Cantonal Conciliation Board. Dated 19 January 1920.

Basle (town)

Act concerning the Permanent State Conciliation Board. Dated 9 November 1911.

Administrative Order of the Act relating to the Permanent State Conciliation Board. Dated 10 February 1912/17 March 1922.

Berne

Act concerning the institution of Conciliation Boards and measures to be taken in case of disorders through strikes. Dated 23 February 1908.

Decree respecting Conciliation Boards. Dated 21 March 1910.

Decree respecting Conciliation Boards. Dated 14 May 1924.

Fribourg

Act introducing the Federal Act relating to work in factories. Dated 17 May 1918.

Act respecting collective disputes in State establishments and undertakings operating under a concession. Dated 17 February 1923. L.S. 1923, Switz. 5.

St. Gall

Act concerning the Cantonal Conciliation Board. Dated 23 November 1922.

Geneva

Order of 11 October 1918 amended by order of 6 December 1919 instituting a Cantonal Conciliation Board.

Act of 3 July 1931 amending sections 3, 4, 6, 77 and 78 of the principal Act concerning the probiviral courts of 12 May 1897. L.S. 1931, Switz. 1.

Glarus

Order concerning the Cantonal Conciliation Board. Dated 6 November 1919.

Graubünden (Grisons)

Act concerning the procedure of conciliation and measures to be taken in case of disorders during collective disputes between employers and employees. Dated 27 May 1908.

Order relating to the Cantonal Conciliation Board. Dated 27 November 1922.

Lucerne

Order concerning the Cantonal Conciliation Board. Dated 22 February 1919.

Neuchâtel

Order concerning the institution of a State Conciliation Board for labour disputes. Dated 9 April 1918.

Nidwalden

Provisions concerning the institution of Conciliation Boards. Dated 20 January 1923.

Obwalden

Order relating to the Permanent Cantonal Conciliation Board. Dated 22 November 1923.

Schaffhausen

Order relating to the Cantonal Conciliation Board. Dated 20 March 1918.

Schwyz

Order concerning the procedure before the Cantonal Conciliation Board. Dated 28 November 1922.

Solothurn

Order of 5 January 1923 to amend the Order (of 18 March 1918 as amended on 13 October 1920 and 16 December 1922) respecting the Cantonal Conciliation Board.

Ticino (Tessin)

Order of Administration concerning the institution of Permanent Conciliation Boards. Dated 16 March 1918, with amendment of 24 May 1918.

Thurgau

Order relating to the institution of the Cantonal Conciliation Board for arbitration and conciliation of collective disputes between employers and employees. Dated 19 April 1918.

Uri

Order relating to the institution of a Cantonal Conciliation Board of 18 April 1918, with amendments of 27 February 1923.

Valais

Administrative Order of the Federal Act relating to work in factories (Cantonal Conciliation Board) of 20 May 1921.

Vaud

Act concerning conciliation and arbitration in collective labour disputes. Dated 6 September 1921.

Zug

Order relating to the Cantonal Conciliation Board. Dated 28 December 1923.

Zurich

Order relating to the Cantonal Conciliation Board. Dated 9 August 1923.

Zurich (town)

Order relating to the Conciliation Board. Dated 21 April 1906.

Standing Orders of the Conciliation Board. Dated 27 June 1906 with amendments of 3 October 1917 and 2 October 1918.

UNITED STATES OF AMERICA ¹**Federal Government**

Act of 28 February 1920: Adjustment of Disputes of Railroad Employees; Labour Board. section 10071 $\frac{1}{4}$ ee - 10071 $\frac{1}{4}$ jjj. [370 (1187-1191).]

Alabama

Code of 1923, sections 7602-7612: Arbitration of Labour Disputes; State Board. [370 (141-142).]

Alaska

Acts of 1913, Chapter 70, sections 1-7: Arbitration of Labour Disputes. [370 (146-148).]

Arizona

Acts of 1925, Chapter 83: Industrial Commission, section 12 (3). [403 (60).]

Arkansas

Digest of 1921, section 6545: Strikes and Lock-outs. [370 (169).]

Colorado

Compiled Laws, 1921, sections 4351-4374. [370 (248-253).]

Connecticut

General Statutes, 1918, sections 5332-5337: Arbitration of Labour Disputes; State Board. [370 (267/8).]

Georgia

Acts of 1911, paragraph E, section 5: Strikes, etc. [370 (307).]

¹ This list has been compiled according to the Bulletins of the United States Department of Labour (Bureau of Labour Statistics). The figures in italics at the end of each law refer to the issue and page of the Bulletin in which the law appeared, for instance 370 (141-142) means that the law appeared in Bulletin No. 370 on pages 141-142.

Idaho

Compiled Statutes ; 1919, Arbitration of Labour Disputes ; Labour Commission, sections 2280-2296 [370 (318-322).]

Illinois

Revised Statutes of 1917, Chapter 10 : Arbitration of Labour Disputes ; State Board, sections 19-26. [370 (330-332).]

Revised Statutes of 1917, Chapter 24½ : Department of Labour, etc., section 43, No. 5. [370 (336).]

Indiana

Acts of 1915, Chapter 118 : Arbitration and Conciliation of Labour Disputes, sections 1-10. [370 (388/8).]

Iowa

Code of 1897, Supplements of 1913, 1915 and 1923, sections 2477n-8 : Arbitration of Labour Disputes. [370 (417/9).]

Kansas

General Statutes, 1915 : Arbitration of Labour Disputes, sections 421-430. [370 (424/5).]

Acts of 1920, Chapter 29 ; Court of Industrial Relations, section 7. [370 (441).]

Acts of 1920. Special Session, Chapter 29, Court of Industrial Relations, sections 1-28. [370 (440-446).]

Louisiana

Revised Laws, 1897 : Arbitration and Conciliation of Labour Disputes, sections 1-13. [370 (459/460).]

Maine

Revised Statutes of 1916, Chapter 49 : Arbitration, etc., of Labour Disputes ; State Board, sections 1-6. [370 (478-480).]

Maryland

Public General Laws. Code of 1911, 1914, Article 7. Arbitration of Labour Disputes, sections 1-6. Article 89, Commissioner of Labour and Statistics, sections 4-11. [370 (489/490) ; (497/499).]

Massachusetts

General Laws, 1921, Chapter 150 : Conciliation and Arbitration ; State Board, sections 1-10. [370 (524-526).]

Michigan

Compiled Laws, 1915 : Arbitration and Mediation of Labour Disputes ; State Board, sections 5564-5576. [370 (545-548).]

Minnesota

Acts of 1921, Chapter 81 : Industrial Commission, section 14, No. 4, Labour Disputes. [370 (589).]

Missouri

Revised Statutes, 1912 : Arbitration and Mediation of Labour Disputes ; State Board, sections 6766-6765. [370 (610-612).]

Montana

Revised Codes, 1921 : Arbitration and Conciliation of Labour Disputes ; State Board, sections 3052-3060. [370 (634-636).]

Nebraska

Constitution, Article XV, section 9 : Labour Disputes ; Industrial Commission. [370 (651).]

Nevada

Revised Laws, 1912, 1919 : Arbitration of Labour Disputes, sections 1929-1935. [370 (662-664).]

New Hampshire

Acts of 1911, Chapter 198 : Arbitration of Labour Disputes ; Bureau of Labour, sections 1-9. [370 (687-689).]

New Jersey

Compiled Statutes, 1910 : Arbitration of Labour Disputes, page 107, sections 8-11. [370 (697).]

Acts of 1925 (16 February 1925), Chapter 169 : Contempts ; Labour Disputes, sections 1-2. [403 (36).]

New York

Consolidated Laws, 1909, Chapter 31 (as amended 1921) : Labour Law, Article II, section 21. Duties of Commissioner. [370 (749).]

Ohio

General Code 1910 : sections 871-22 (as amended 1915, p. 510) (8). [370 (819).]
Arbitration of Labour Disputes, sections 1063-1077. [370 (837/8).]

Oklahoma

Constitution : Article VI : Arbitration of Labour Disputes, section 21. Board of Conciliation and Arbitration. [370 (856).]

Article IX : Arbitration of Labour Disputes, section 42. Arbitration, compulsory. [370 (857).]

Revised Laws : 1910 : Arbitration of Labour Disputes ; Board of Conciliation, and Arbitration, sections 3705-3721. [370 (859/60).]

Oregon

Laws, 1920 : Conciliation and Arbitration ; State Board, sections 6820-6833. [370 (900-902).]

Pennsylvania

Statutes 1920 : Mediation and Arbitration, section 13500. [370 (915).]

Acts of 1923, section 1706 : Mediation and Arbitration. [370 (942).]

Philippine Islands

Acts of 1917, Act No. 2711, Administrative Code, Bureau of Labour, section 2059 : Powers and Duties (d). [370 (950).]

Porto Rico

Acts of 1919, Act No. 36 : Mediation and Conciliation ; Insular Commission, sections 1-12. [370 (962-965).]

Acts of 1925, No. 6 (1 May 1925) : Agriculture and Labour ; Municipal Boards, section 10 (e). [403 (45).]

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